

MEMORANDUM

JANUARY 6, 1982

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: WATERFRONT PROJECT, MASS. R-77
AUTHORIZATION TO EXECUTE A LEASE COMMENCEMENT AGREEMENT
WITH MARKETPLACE CENTER ASSOCIATES CONCERNING DISPOSITION
PARCEL D-10

As you are aware, the Authority in early 1982 tentatively designated Marketplace Center Associates as redeveloper of Parcel D-10 for the construction of a complex which will include approximately 350,000 square feet of office space and 50,000 square feet of retail space and 123 parking spaces, to cost approximately \$60,000,000.00.

The developer and the Authority staff have been working extensively to finalize the Lease Commencement Agreement and the lease document itself, and to finalize the design review process of this complex development.

It is recommended that the Director be authorized to execute the Lease Commencement Agreement substantially in the form attached hereto which, by its terms, lays out the basic framework of the mutual commitments of the parties. The Lease Commencement Agreement is significantly important to the Authority because it sets an outside date of 180 days from now that the developer commences paying the monthly lease rentals. We fully anticipate that these monthly rentals will commence by as early as March if the developer is able to commence construction as presently scheduled. However, this Lease Commencement Agreement provides an outside date on which the Authority can be assured of income for its budgetary purposes.

VOTED: That the Director be and hereby is authorized to execute the Lease Commencement Agreement concerning Disposition Parcel D-10 in the Waterfront Urban Renewal Project, Mass. R-77; said agreement to be substantially in the form of the 32 page document attached hereto dated January 6, 1983 and entitled "LEASE COMMENCEMENT AGREEMENT BETWEEN BOSTON REDEVELOPMENT AUTHORITY AND JAMES F. SULLIVAN, dba MARKETPLACE CENTER ASSOCIATES".

JANUARY 6, 1983

LEASE COMMENCEMENT AGREEMENT

BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

JAMES F. SULLIVAN, dba
MARKETPLACE CENTER ASSOCIATES

For property known as
Parcel D-10 at the corner of
Commercial Street
and
State Street
Boston
Massachusetts

This LEASE COMMENCEMENT AGREEMENT (this "Agreement") is made this ____ day of _____, 1983, by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), and James F. Sullivan, dba Marketplace Center Associates, a Massachusetts limited partnership ("Associates").

WITNESSETH

Reference is made to the following facts:

a. On January 21, 1982 the BRA tentatively designated Associates as redeveloper of Disposition Parcel D-10 (the "Site", as described in Exhibit A hereto) in the Downtown Waterfront-Faneuil Hall Urban Renewal Area in the City of Boston. Pursuant to the terms hereof and the terms of the Lease (as hereinafter defined) there will be designed, developed and maintained buildings and other improvements (the "Improvements") upon the Site.

B. The tentative designation by the BRA is subject to Associates' execution of a leasehold agreement embodying requirements and pre-conditions for final designation, which final designation shall be simultaneous with the effective date (the "Lease Commencement Date") of a long-term lease (the "Lease") from the BRA to Associates. This Agreement is the leasehold agreement to which the tentative designation refers.

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, it is hereby agreed as follows:

1. Except as Associates may be entitled to and shall elect to extend its time for performance hereunder as set out in Paragraph 22 hereof, and except as expressly provided in Paragraph 3A hereof, Associates agrees no later than 180 days from the date hereof to perform all its obligations under this Agreement and to satisfy all conditions precedent to execution of the Lease established in this Agreement. The BRA, upon determining that Associates has so performed and satisfied such conditions precedent, shall make a final designation of Associates as redeveloper of the Site in accordance with its usual procedures. Simultaneously therewith, if Associates shall not then be in default of any of its obligations hereunder, Associates and the BRA shall execute the Lease and the date of execution shall be the Lease Commencement Date. The lease shall be a Ground Lease between the BRA and Associates in the form substantially agreed to by the parties simultaneous with the execution of this Agreement by Associates, and such Ground Lease shall be annexed hereto as Exhibit B.

2. It is the intention of the parties that prior to the Lease Commencement Date, and as a condition precedent to final designation of the BRA as referred to in Paragraph 1 hereof, Associates shall prepare the redevelopment of the Site in accordance with the procedures and the schedules set forth in Paragraphs 4 to 7, inclusive, of this Agreement, and in general conformity with the Development Program annexed hereto as Exhibit C.

3. The sole obligation of the BRA hereunder shall be timely to perform its duties with respect to approvals required of

the BRA and with respect to final designation and execution of the lease in the manner herein set forth and fully to cooperate with Associates in efforts to obtain other approvals from the BRA, the City of Boston and other governmental authorities, including, without limitation, those activities referred to in Paragraph 3A hereof. Associates shall secure (with all appeal periods having expired or all appeals taken having been determined in favor of Associates) all permits and approvals, and shall accomplish all filings, required under all laws, ordinances and regulations of all governmental authorities having jurisdiction respecting the development of the Site and the Improvements as contemplated by this agreement, including, without limiting the generality of the foregoing: zoning variances and conditional use permits, garage and gas storage permits, filings and permits under the Massachusetts Environmental Protection Act and other applicable environmental protection laws, filings under Chapter 579 of the Acts of 1980. Associates will exercise its best efforts to secure all such permits and approvals and accomplish all such filings on or prior to the Lease Commencement Date and the BRA shall assist and cooperate with Associates in so doing, including joining in any application or filing as may be required. The BRA does not guaranty the issuance of any such permits or approvals.

The Site is to be delivered in its then condition, "as is", it being agreed that, during the period of this Agreement, Associates will have opportunity to examine the same in all respects (including subsurface conditions and utilities). The

BRA has made no representations or warranties of any kind with respect to such condition and the BRA shall have no obligation except as expressly provided in the remainder of this Paragraph to do any work on or with respect to the Site, or the condition thereof. Specific reference is made to the existence on the Site of utility installations consisting of a high service line of the Boston Water & Sewer Commission, a steam line of the Boston Edison Co., an electrical vault of the Boston Edison Co., and certain telephone cables of the New England Telephone Co., and a gas line of Boston Gas Co., the specific locations of each of the same being shown on Exhibit H. With respect to the foregoing utility installations, but without limiting Associates' obligation to take the Site "as is", BRA will exercise its best efforts to assist Associates with any efforts Associates may undertake to arrange for the entities maintaining said installations either to relocate them or to accommodate them to the construction of the Improvements without direct or consequential expense to Associates or the BRA.

3A. Except for the matters referenced below, Associates has reviewed and approved the BRA's record title to the Site through April 28, 1982. With respect to such matters, BRA and Associates agree that the following actions will be sufficient to remove Associates' objections thereto:

(a) A valid waiver in writing and in recordable form from the Public Improvements Commission (with respect to a restriction against construction on a

portion of the Site 16 feet in width adjacent to Commercial Street and referred to as Area "A" in an Agreement dated September 24, 1975 entered into by the BRA and the Public Improvements Commission which is recorded at the Suffolk Registry of Deeds in Book 8819, Page 69;

(b) Street discontinuances (in confirmatory form if required by the Public Improvements Commission ("PIC")) to be voted by the PIC with respect to the failure of the Public Improvements Commission to have discontinued certain portions of South Market Street, Commerce Street and Commercial Street within the Site described as follows:

(i) South Market Street and Commerce Street: Those portions of South Market Street and Commerce Street contained within the Site and including utility and other easements in such streets;

(ii) Commercial Street: That portion of Commercial Street contained (A) within the Site and (B) within the area shown as "Area 'A'" on a plan entitled "Boston Redevelopment Authority, Downtown Waterfront Faneuil Hall Project, Project No. Mass. R-77, Boston, Suffolk County, Massachusetts, Area 'A'", recorded in Suffolk Deeds at Book 8819, Page End;

(c) Consent by the Mayor of the City of Boston with respect to certain takings by the BRA against the City of Boston concerning the Site which are recorded at Suffolk Registry of Deeds in:

<u>Book</u>	<u>Page</u>	<u>Book</u>	<u>Page</u>
7929	440	8033	270
7984	666	8034	1
7997	632	8062	166
8018	518	8490	586
8023	249	8807	320

(d) the removal of all liens or encumbrances of record (if any shall exist) arising after April 28, 1982 and prior to the date of recording the notice of the Ground Lease between the BRA and Associates.

Within sixty (60) days after the date hereof Associates shall prepare appropriate documents to accomplish the foregoing actions, and the BRA shall cooperate with Associates in obtaining approval and execution thereof from the Public Improvements Commission and the Mayor, as the case may be. If, without fault of Associates, despite its diligent best efforts to obtain such actions, one hundred twenty (120) days after the date hereof the foregoing actions have not been accomplished, Associates at its option, by notice given to the BRA not later than fifteen (15) days after the expiration of such 120-day period, may extend the date established in Paragraph 1 hereof for the execution of the Lease for such period as may be reasonably necessary to accomplish the foregoing actions, not to exceed ninety (90) days.

4. Not later than one hundred twenty (120) days after the date hereof, Associates shall enter into a contract, which prior to execution shall be submitted to and be subject to the approval of the BRA, with Meredith & Grew (the "Development Consultant") to serve as management and leasing agent for the Improvements to be developed on the Site in accordance with the Development Program. The services of the Development Consultant shall include and not be inconsistent with those which are

customary in connection with the management and leasing of a first-class office and retail development in Boston. Associates shall not discharge the Development Consultant without cause (except that the contract with the Development Consultant may provide for termination without cause at specified intervals, and Associates may terminate the contract in accordance with such provisions), or alter or amend the contract for consulting services between Associates and the Development Consultant, or engage any person or firm other than the Development Consultant to perform the services provided for in the contract entered into under this Paragraph, without in each instance obtaining the prior written consent of the BRA.

5. Not later than 120 days after the date hereof, Associates shall enter into a contract, which prior to execution shall be submitted to and be subject to the approval of the BRA, with WZMH Group, Inc. (the "Architect") to provide architectural services for the redevelopment of the Site in accordance with the Development Program and this Agreement, including the preparation of Design Materials (as hereinafter defined) for construction of the Improvements. Associates shall not discharge the Architect without cause, or alter or amend the contract for architectural services between Associates and the Architect, or engage any person or firm other than the Architect to perform the services provided for in the contract entered into under this Paragraph, without in each instance obtaining the prior written consent of the BRA.

6. Not later than one hundred twenty (120) days after the date hereof, Associates shall enter into a contract, which prior to execution shall be submitted to and be subject to the approval of the BRA, with a consulting firm acceptable to the BRA (the "Museum Consultant") for services relative to the design and development of the Museum of Boston in accordance with the Development Program. Associates shall not discharge the Museum Consultant without cause, or alter or amend the contract for consulting services between Associates and the Museum Consultant, or engage any person or firm other than the Museum Consultant to perform the services provided for in the contract entered into under this Paragraph, without in each instance obtaining the prior written consent of the BRA.

7. (a) The Design Review Procedure attached to this Agreement as Exhibit D sets forth the formal stages of submissions and approvals of the Schematic Design, the Design Development, the Preliminary Plans and Specifications, and the Final Plans and Specifications (collectively, the "Design materials") for the Improvements to be constructed and installed by Associates in the redevelopment of the Site. As used herein the reference to Design Materials (including Final Plans and Specifications, as hereinafter defined) shall also be to the same materials (including Final Plans and Specifications) as defined in the Lease. In the event that any provision of the Design Review Procedure shall be inconsistent with any other provision of this Agreement, then this Agreement shall prevail over such inconsistent provision. Except

as otherwise herein expressly provided, Associates shall submit Final Plans and Specifications which meet the requirements of Subparagraph 7(e) and receive the approval of the BRA within one hundred eighty (180) days from the date hereof.

(b) The BRA hereby acknowledges its receipt and approval of the Schematic Design for the Improvements, dated _____, which Schematic Design fulfills all requirements established therefor by the Design Review Procedure.

(c) Within thirty (30) days after the date hereof Associates shall submit to the BRA the Design Development for the Improvements (as described in the Design Review Procedure), which shall be in conformity with the approved Schematic Design. The BRA shall review the Design Development and shall, within ten (10) days after receipt thereof, either approve the Design Development or notify Associates in writing of disapproval, specifying the respects in which the Design Development is disapproved.

In the event of a disapproval, Associates shall, within thirty (30) days after Associates receives the written notice of such disapproval, resubmit the Design Development altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Design Development shall be approved by the BRA.

If Associates receives no notification from the BRA of such disapproval within ten (10) days after submission

of the Design Development or any correction thereof, as the case may be, such Design Development or corrected Design Development shall be deemed approved.

(d) Within sixty (60) days after the BRA has approved or has been deemed to approve the Design Development, Associates shall submit to the BRA the Preliminary Plans and Specifications for the Improvements (as described in the Design Review Procedure), which shall be in conformity with the Approved Design Development. The BRA shall review the Preliminary Plans and Specifications and shall, within ten (10) days after receipt thereof, either approve the Preliminary Plans and Specifications or notify Associates in writing of disapproval, specifying the respects in which the Preliminary Plans and Specifications are disapproved.

In the event of a disapproval, Associates shall, within thirty (30) days after Associates receives the written notice of such disapproval, resubmit the Preliminary Plans and Specifications altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Preliminary Plans and Specifications shall be approved by the BRA.

If Associates receives no notification from the BRA of such disapproval within ten (10) days after submission of the Preliminary Plans and Specifications or any correction

thereof, as the case may be, such Preliminary Plans and Specifications or corrected Preliminary Plans and Specifications shall be deemed approved.

(e) Within ninety (90) days after the BRA has approved or has been deemed to approve the Preliminary Plans and Specifications, Associates shall submit to the BRA the Final Plans and Specifications for the Improvements (as described in the Design Review Procedure), which shall be in conformity with the Preliminary Plans and Specifications. The BRA shall review the Final Plans and Specifications and shall, within ten (10) days after receipt thereof, either approve the Final Plans and Specifications or notify Associates in writing of disapproval, specifying the respects in which the Final Plans and Specifications are disapproved.

In the event of a disapproval, Associates shall, within thirty (30) days after Associates receives the written notice of such disapproval, resubmit the Final Plans and Specifications altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Final Plans and Specifications shall be approved by the BRA.

If Associates receives no notification from the BRA of such disapproval within ten (10) days after submission of the Final Plans and Specifications or any correction thereof,

as the case may be, such Final Plans and Specifications or corrected Final Plans and Specifications shall be deemed approved.

(f) With respect to approvals by the BRA under Paragraphs 7(a) through (e) above, once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of the previously approved submissions or to new elements which were not present in previous submissions.

7A. As part of its submission of Preliminary Plans and Specifications, Associates may include plans and specifications prepared by the Architect for purposes of commencing work with respect to certain elements of the Project which may include site work, foundation work and other similar items which Associates proposes to commence on a "fast-track" basis. The BRA will promptly review said plans and specifications for "fast-track" construction in conjunction with its review of the Preliminary Plans and Specifications and shall approve commencement of work on specific "fast-track" construction elements which are demonstrated to the satisfaction of the BRA to be consistent with those portions of the Design Materials previously approved and with elements of the Preliminary Plans and Specifications which are acceptable to the BRA. As a condition to proceeding with construction of any "fast-track" element, a copy of the "fast-track" contract (if any such contract exists) and a writing complying with the requirements of Paragraph 13(a) hereof which provides for construction on a "fast-track" basis, shall be submitted by Associates in advance to the BRA for its approval and

Associates shall meet the other requirements of Paragraph 13 hereof as applicable. In connection with the approval of "fast-track" construction elements, the BRA shall make a final designation of Associates, the Lease shall be signed and the date of such execution shall be the Lease Commencement Date; provided, however, that approval of "fast-track" construction elements shall not waive the BRA's subsequent rights with respect to review and approval of all Design Materials. Any construction prior to BRA approval of the Final Plans and Specifications shall be at the sole risk of Associates with respect to costs of corrective or additional work (which may include demolition) to conform the work to the Design Materials approved by the BRA.

8. Associates shall consult with Faneuil Hall Marketplace Associates ("FHMA"), Lessee from the BRA under an Indenture of Lease dated February 21, 1975 (the "Quincy Marketplace Lease") as amended, and exercise its best efforts to reach mutually agreeable arrangements to accommodate on the Site the Mechanical Equipment Area and the Trash Compaction and Storage Area described in Sections 4.09 and 4.10, respectively, of the Quincy Marketplace Lease. The BRA shall use its best efforts to secure the cooperation of FHMA in this regard, and the BRA shall cooperate with Associates and FHMA in their efforts to reach a mutually agreeable arrangement. Upon agreement on such arrangements, Associates and Faneuil Hall Marketplace Associates shall present appropriate instruments to modify the Quincy Marketplace Lease for the

approval of the BRA, which approval shall not be unreasonably withheld.

9. Associates shall provide as part of the Improvements works of art satisfactory to the BRA and shall expend for such works of art a sum at least equal to one percent (1%) of the Total Project Costs (as defined in the Lease). In this connection, the Design Materials submitted to the BRA shall show at each stage the development of the program for the use of works of art in the redevelopment of the Site. The term "works of art" as used herein shall include, without limitation, ornaments, arrangements or effects created through the use of sculpture, bas-reliefs, mosaics, frescos, murals, prints, tapestries, paintings, fountains which are sculptural in themselves or designed to enhance the setting of the sculpture, non-standard street and plaza treatments and other improvements having an increment of aesthetic value, and other objects having aesthetic merit, as approved by the BRA. the requirements of this Paragraph 9 may be satisfied in whole or in part by works of art located off the Site and the location of all works of art off the Site shall be subject to approval of the BRA both as to location and satisfaction of the other requirements of this paragraph 9.

10. Associates acknowledges that the tentative designation has been made by the BRA in reliance on Associates' undertaking to suitably develop and enhance the "Walk to the Sea" on a portion of the Site and on areas adjacent to the Site described in Exhibit F, in accordance with the Development Program. Associates

shall include in submissions of Design Materials appropriate design detail showing the manner in which Associates shall perform this portion of the Development Program. In addition, no later than one hundred twenty (120) days after the date hereof, Associates shall submit evidence satisfactory to the BRA that Associates and its successors and assigns will possess sufficient authority over the "Walk to the Sea" area described in Exhibit F for the term of the Lease to enable the full performance by Associates of its undertakings relating to development and maintenance of the Walk to the Sea. Since the areas described in Exhibit F are under the jurisdiction of the City of Boston, or the Commonwealth of Massachusetts, or other governmental authority, the BRA will assist and cooperate with Associates in its efforts to secure the authority and control sufficient to enable Associates to perform such undertakings.

11. It is the general policy of the BRA that all new buildings constructed in urban renewal project areas shall be designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Associates' obligation to comply with all legal requirements applicable thereto, the Design Materials (including the Final Plans and Specifications) shall include provisions conforming insofar as practicable with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which Specifications, as amended

from time to time, are hereby incorporated herein by reference. The BRA shall take into consideration the provisions and objectives of such specifications in its review of and action upon the Design Materials (including Final Plans and Specifications).

12. Not later than one hundred twenty (120) days after the date hereof, Associates shall submit to the BRA a copy (certified by Associates to be true and correct) of a firm commitment, issued by a lender which is reasonably satisfactory to the BRA and which is an Institution as herein defined, whereby such lender agrees to furnish construction financing for the Improvements contained in the Final Plans and Specifications together with evidence satisfactory to the BRA that Associates has demonstrated, to the satisfaction of such lender, the availability of equity capital which, when combined with the financing to be provided by such lender, is adequate to complete the Improvements and provide for all aspects of construction for the redevelopment of the Site in accordance with the Development Program. Such commitment shall be accompanied by such further materials as the BRA may reasonably request evidencing satisfaction of, or Associates' ability to satisfy, the conditions to lending therein set forth. Institution shall mean any one of the following:

(i) a bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code (or like future provisions of such Code)

chartered under the laws of The United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$100,000,000.

(ii) an educational institution with a capital endowment of not less than \$100,000,000.

(iii) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution or for any trade union, and, in each case, having a net worth, determined in accordance with recognized accounting practices, of not less than \$100,000,000.

13. If the same exists by that time (or, if not, as soon thereafter as the same shall exist), prior to and as further conditions precedent to the Lease Commencement Date, Associates shall have submitted to the BRA the following:

(a) A copy (certified by Associates to be true and correct) of the contract between Associates and the general contractor (hereinafter called the "Contractor") engaged by Associates for the construction of the Improvements shown and described in the Final Plans and Specifications, together with a writing executed by the Contractor in which the Contractor undertakes to carry out all of the provisions hereof relating to the work to

be performed by the Contractor and those engaged by him and the requirements of Paragraph 18 of this Agreement. Such contract and writing shall be subject to the approval of the BRA (or in the case of "fast-track" construction, any construction contract related thereto, if it exists).

(b) A copy of a building permit issued by the Boston Inspectional Services Department fully covering the Improvements, together with evidence satisfactory to the BRA that all fees in connection therewith have been paid. Associates shall not apply for a building permit for the construction of the Improvements without the prior certification of the BRA that the work to be done or completed as set forth in the permit application is in accordance with the Final Plans and Specifications approved by the BRA.

(c) A copy of a performance and payment bond or other assurance of completion of the Improvements contained in the Final Plans and Specifications satisfactory in form and amount to the BRA.

14. Associates shall at all times keep the BRA fully and currently advised of the status of all aspects of Associates' progress in meeting the conditions of this Agreement with respect to the redevelopment of the Site, including, without limiting the generality of the foregoing, development of the Design Materials,

securing of financing, and arrangements for construction. All contracts entered into by Associates respecting the redevelopment of the Site shall obligate the parties to act in a manner consistent with the obligations of Associates under this Agreement and the Lease. During the implementation of any such contracts the BRA shall have the right to review all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the obligations of Associates under this Agreement.

15. Annexed as Exhibit G to this Agreement is a License dated _____ granted by BRA to Associates (the "License"). Associates hereby agrees to perform and observe all the terms and conditions of the License. Associates shall make available to the BRA the results of all tests, surveys and examinations resulting from its entry upon the Site.

16. In the event this Agreement shall be terminated for any reason other than the failure of the BRA to perform its obligations hereunder, then Associates will turn over and cause others to turn over to the BRA all reports, test data, plans and other material developed in connection with its efforts hereunder relative to redevelopment of the Site or any part thereof. Associates agrees to use its best efforts to secure the agreement of the providers of the services so that the BRA (or others to whom the BRA may at any time transfer all or any part of such material) shall thereafter be free, without obtaining the consent of Associates or the provider or any such services and without

liability or cost, to use all material turned over to it or required to be turned over to it.

17. Associates agrees that all studies undertaken by it and all work done by it for or with respect to the redevelopment of all or any part of the Site shall be at its sole cost and expense and without liability to the BRA, that the same shall be undertaken in compliance with all applicable laws and regulations and that the Site shall be restored to its prior condition, to the extent reasonably possible, after any physical disruption to the surface or subsurface thereof in the course of any pre-construction testing or exploration.

18. Associates, for itself and all successors and assigns, agrees that in the redevelopment of the Site and in all construction activity undertaken therein:

(a) Associates will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age or national origin. Associates will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Associates agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(b) Associates will, in all solicitations or advertisements for employees placed by or on behalf of Associates, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin.

(c) Associates will send to each labor union or representative of workers with which Associates has a collective bargaining agreement or other contract or understanding, a notice, to be provided advising the said labor union or workers' representative of Associates' commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended,* and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Associates will comply with all provisions of Executive Order #11246 of September 24, 1965 as amended,* and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Associates will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended,* and by the rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to Associates' books, records, and accounts by the BRA, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of Associates' noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, upon written notice to Associates, and the continuance of such noncompliance for sixty (60) days thereafter, this Agreement may be cancelled, terminated or suspended in whole or in part and Associates may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended,* and such other sanctions may be imposed and remedies invoked as provided in Executive Order #11246, of September 24, 1965, as amended,* or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law.

(g) Associates will include the provisions of paragraphs (a) through (g) of this Section in every

* Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967.

contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended,* so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. Associates will take such action with respect to any construction contract, subcontract, or purchase order as the BRA directs as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Associates becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the BRA, Associates may request the United States to enter into such litigation to protect the interest of the United States.

Associates, for itself and all successors and assigns, further agrees that in the redevelopment of the Site and in all construction activity undertaken with respect thereto, it will exercise best efforts and shall cause the Contractor to exercise best efforts (in each case, to the extent permitted by law) to employ workers so that the worker hours on a craft-by-craft basis shall be performed as follows:

- (a) at least 50% by bona fide City of Boston residents;
- (b) at least 25% by minorities;
- (c) at least 10% by women.

For the purposes of this Paragraph 18, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions. Associates shall require the Contractor to

* Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967.

notify the City of Boston Employment and Economic Policy Administration, five (5) days in advance of any public advertisement and ten (10) days in advance of any proposed hiring date (five days for construction jobs), of the existence of job opportunities which it intends to establish in connection with construction, stating its desire to be referred Boston residents. Associates shall further direct the Contractor to maintain records reasonably necessary to ascertain compliance with this Paragraph for at least one (1) year after the issuance of the Certificate of Completion, and to make the same available to the BRA for inspection upon reasonable notice.

19. The BRA acknowledges that as of the date of execution of this Agreement, Associates is comprised solely of James F. Sullivan in his individual capacity and that in the course of arranging financing for the development of the Site and Improvements it may be necessary to admit additional individuals or firms to the developer entity and further that Mr. Sullivan may not retain a controlling position in the ultimate developer entity. Nevertheless, Associates agrees that there will be no agreement to transfer or assign, nor any such transfer or assignment, of any of Mr. Sullivan's or Associates' interest in or rights to the Site or under this Agreement, without in each case first securing the approval of the BRA.

The parties acknowledge and agree that any Institution approved by the BRA and involved in the development of the Site with Associates either as a member of the finally designated

redeveloper or as leasehold mortgagee, or both, may require modifications to the form of Lease for the purpose of implementing the mortgagee protection provisions thereof or otherwise facilitating the "financeability" of the Lease. The BRA agrees not to withhold unreasonably its agreement to enter into such requested modifications provided that, in the sole opinion of the BRA, the same shall in no way affect the term or rent (base, percentage or additional) or otherwise in any material respect adversely affecting any of the rights or interests of the BRA under the Lease. Without limitation, before giving any such agreement, the BRA may require reasonable changes to any proposed modification.

20. Associates hereby agrees to defend, indemnify and hold harmless the BRA, its members, officers and employees from and against all claims, costs, fees, expenses, liabilities and damages (including attorneys' fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as the result of any activities undertaken by or for Associates in its implementation of this Agreement or its activities with respect to the Site, except that this indemnity shall not apply to costs of litigation incurred by, and assessed to, the BRA with respect to any suit or claim brought by a utility company whose lines (shown on Exhibit H) Associates has relocated or accommodated in the Site pursuant to Paragraph 3 hereof.

21. If Associates shall neglect or fail to perform or observe any obligation contained in Paragraph 1, Paragraphs 4 to

7, inclusive, or Paragraph 12 hereof to be performed or observed on the part of Associates, the BRA may at any time thereafter terminate this Agreement and rescind the tentative designation of Associates and terminate all other rights, interests and claims of Associates to and in the Site. If Associates shall neglect or fail to perform or observe any other obligation herein contained to be performed or observed on the part of Associates (including its obligations to make any payments under Paragraph 22) and the BRA shall serve upon Associates notice of such neglect or failure and if the same shall not be cured within ten (10) days of notice thereof, the BRA may at any time thereafter upon further notice, terminate this Agreement and rescind the tentative designation of Associates and terminate all other rights, interests and claims of Associates to and in the Site. Within five (5) days of the date of termination, Associates shall perform its obligations under Paragraph 16 hereof. Except with respect to those obligations which survive termination as provided in the following sentence, termination of this Agreement shall be the sole remedy in lieu of all other rights and remedies the BRA may have against Associates on account of any failure or default on the part of Associates hereunder. Notwithstanding such termination, Associates shall remain liable for all obligations theretofore accrued by it hereunder and the obligations of Associates under paragraphs 15, 16, 17, 20 and 23(1) hereof shall survive the termination of the Agreement, but otherwise Associates' obligations shall not survive termination.

22. Notwithstanding any other provisions herein contained, if, within one hundred and sixty-five (165) days from the date hereof, (i) Associates shall have satisfied all of its obligations hereunder except for its obligations under Paragraph 13, and (ii) Associates shall desire to extend its time for performance hereunder and prevent the termination of this Agreement by the BRA under Paragraph 21 hereof, Associates may do so by:

(a) Sending notice to the BRA, at least fifteen (15) days prior to the expiration of such one hundred and eighty (180) day period, of its desire to extend the 180 day period under Paragraph 1 hereof by a further period of 180 days;

(b) Indicating in such notice its agreement to pay, for each whole or partial 30-day period within such extension period, the sum of \$150,000. Such notice shall be accompanied by the first payment of \$150,000, with succeeding payments to be made at 30-day intervals thereafter, provided, however, that payment hereunder shall be satisfied to the extent of any payment under the license described in Paragraph 7A hereof, and vice versa.

Upon the giving of such notice and payment as required above, the 180-day period in Paragraph 1 shall be changed to 360 days, and shall not exceed a 360 day period even if there has been an extension under Paragraph 3A. No further extensions shall be allowed hereunder and if Associates shall not have fully

performed all of its obligations hereunder by the end of the extended period then Associates shall be treated as in default hereunder.

23. (a) Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

(b) The waiver of the BRA or Associates of any breach of any term or condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

(c) Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

(d) If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and

provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(e) No member of the Congress of The United States of America shall be admitted to any share or part thereof, or to any benefit to arise from this Agreement. No member, official, or employee of the BRA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

(f) No member, official or employee of the BRA shall be personally liable to Associates in the event of any default or breach by the BRA or for any amount which may become due to Associates or on any obligations under the terms of this Agreement.

(g) Except as otherwise specifically provided in this Agreement whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the BRA or Associates.

Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally served, or,

in lieu of personal service, by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to the BRA, the address of BRA is:

City Hall
Boston, Massachusetts

with a duplicate copy to:

and if addressed to Associates, the address of Associates is:

with a duplicate copy to:

Either the BRA or Associates may change its respective addresses by giving written notice to the other in accordance with the provisions of this Paragraph.

Any requests for approvals made by Associates to the BRA where such approvals shall be deemed granted after a period of non-reply by the BRA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type in each instance setting forth the applicable length of such period of nonreply:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITH ____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

(h) Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture.

(i) Upon execution of the Lease as required hereby, this Agreement shall terminate, provided that the provisions of Paragraphs 4, 5, 6, 8, 10, 15, 20 and 23(1) shall survive the termination of the Agreement.

(j) In its discretion, the BRA may waive any conditions herein contained to be performed for its benefit.

(k) The rights and obligations of the parties hereto shall be binding upon and shall inure to the benefit of their respective successors and assigns (in case of Associates, to the extent any such assignment is herein permitted) of the parties hereto.

(l) Reference is made to the fact that the Site is now being used for parking under a written arrangement between the BRA and an entity of which James F. Sullivan is a principal, which arrangement provides for certain revenues to be paid to the BRA. The execution of this Agreement by James F. Sullivan does not affect such arrangement including the provision that such revenues

shall continue to be paid to the BRA, unless such arrangement is terminated pursuant to its terms.

WITNESS the execution hereof as of this day of
, 1983, under seal.

JAMES F. SULLIVAN, dba
MARKETPLACE CENTER ASSOCIATES

James F. Sullivan

BOSTON REDEVELOPMENT AUTHORITY

Approved as to form:

By _____

Chief General Counsel

LIST OF EXHIBITS

Exhibit A	Description of the Site
Exhibit B	Form of Ground Lease Between Boston Redevelopment Authority and Marketplace Center Associates for Property Known as Parcel D-10 at the Corner of Commercial Street and State Street, Boston, Massachusetts
Exhibit C	Development Program for Parcel D-10
Exhibit D	Outline Scope of Services for the Development Consultant
Exhibit E	BRA Design Review Procedure
Exhibit F	Description of the areas included within Associates' undertaking for the "Walk to the Sea"
Exhibit G	License
Exhibit H	Locations of Certain Utilities on the Site

GROUND LEASE

BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

MARKETPLACE CENTER ASSOCIATES

For property known as
Parcel D-10 at the corner of
Commercial Street
and
State Street
Boston
Massachusetts

INDEX

to

GROUND LEASE

between

BOSTON REDEVELOPMENT AUTHORITY

and

MARKETPLACE CENTER ASSOCIATES

For property known as
Parcel D-10 at the corner of
Commercial Street
and
State Street
Boston
Massachusetts

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THIS GROUND LEASE is entered into by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts ("Landlord"), and Marketplace Center Associates, a Massachusetts limited partnership ("Tenant").

ARTICLE 1

PREMISES

1.1 Landlord, for and in consideration of the rents hereinafter reserved by Landlord and the covenants and agreements hereinafter contained on the part of the Tenant to be paid, kept and performed, does hereby lease to Tenant, and Tenant does hereby take and hire upon and subject to the terms and conditions herein set forth, the Leased Premises.

1.2 The term "Leased Premises" shall mean that certain parcel of land situated on Commercial Street in Boston, Suffolk County, Massachusetts (but excluding all Improvements and all Building Service Equipment, both as hereinafter defined, now or hereinafter located thereon) which land is more particularly described in Exhibit "A" attached hereto and which consists of 75,008 square feet, more or less, together with any easements or other rights now appurtenant to said parcel of land, but specifically excluding all right and interest, if any, of Landlord in and to the land lying in the streets and roads in front of and adjoining said parcel of land, subject however, to the exceptions to fee title described as the Permitted Exceptions set forth in

Exhibit "B" attached hereto.

1.3 The term "Improvements" shall mean all improvements, structures, buildings, interiors, landscaping, paving, pipes and conduits, roads, walkways, fixtures and, to the extent of Tenant's interest therein, fencing and utility lines, existing on the Leased Premises at the Lease Commencement Date, and all alterations and additions thereto and replacements thereof, and any other buildings, structures or improvements hereafter erected on the Leased Premises.

1.4 The term "Building Service Equipment" shall mean all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property necessary for the proper maintenance, protection, conservation and operation of the Improvements (other than movable trade fixtures, machinery and equipment) and in particular shall include, without limiting the generality of the foregoing, the following, if any: awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air cooling and air conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools,

building supplies, lobby decorations and window washing hoists and equipment; garage equipment and gardening and landscaping equipment; and all additions thereto and replacements thereof, but excluding from Building Service Equipment any property coming within the foregoing description which is owned by Occupancy Tenants and used by them in connection with the operation of their respective spaces and not in connection with the operation of the Improvements as a whole.

1.5 The term "Property" shall mean the Leased Premises and the Improvements and the Building Service Equipment.

ARTICLE 2

TERM

2.1 The term of this Lease is for _____ () years commencing _____, (the "Lease Commencement Date") and ending at midnight on _____ (the "Lease Expiration Date") unless sooner terminated as provided for in this Lease.

ARTICLE 3

RENT

3.1 Commencing on the Lease Commencement Date, Tenant covenants and agrees to pay to Landlord without demand, abatement, deduction or offset, as rent, in lawful money of the United States, annual rental as follows:

A. Tenant shall pay for each Lease Year or partial Lease Year during the term hereof Base Rent at the annual rate of One Million Eight Hundred Thousand Dollars (\$1,800,000),

which sum shall be paid in monthly installments of One Hundred Fifty Thousand Dollars (\$150,000) payable in advance on the first day of each month, except that the first such payment shall be paid on the Lease Commencement Date and shall be prorated if the Lease Commencement Date is other than the first day of the month.

B. Tenant shall also pay as additional rent:

(1) Annually for each Lease Year or partial Lease Year during the term hereof a sum ("Percentage Rent") equal to fifteen percent (15%) of the amount of Net Cash Flow for each such Lease Year, and

(2) As and when the same are received by or made available to or for the benefit of Tenant, fifteen percent (15%) of all Net Refinancing Proceeds.

C. For purposes of this Lease the following terms shall have the following meanings:

(1) The term "Net Cash Flow" shall mean the amount by which Gross Revenue during any given Lease Year exceeds Allowed Deductions during such Lease Year.

(2) The term "Gross Revenue" shall mean:

(a) all revenues of every type and from every source whatsoever (including Occupancy Tenants) from or with respect to the Property for the use, occupancy or other utilization of space in, or other facilities of, the Property under any use, occupancy or other agreements,

written or oral and however denominated (other than security and other deposits returnable upon expiration of any occupancy lease);

(b) Payments from the Tenant at market rentals for any space which it or any person associated with it occupies or uses in the Property, the Tenant hereby agreeing to make such payments on an annual basis. The market rentals therefor shall be based upon rentals for reasonably comparable space in the Property and as if such space were leased for a term of five (5) years, such market rental rate to be re-calculated at five (5) year intervals.

Gross Revenue shall be computed on a cash basis in accordance with generally accepted accounting principles consistently applied.

(3) The term "Allowed Deductions" shall mean only the following amounts actually paid with respect to the Lease Year in question:

(a) All Impositions (as hereinafter defined) and, all reasonable and customary charges incurred for the maintenance, protection, conservation and operation of the Property in the manner required by this Lease and consistent with the operation and management from time to time of like first-class properties in the City of Boston including: payments made by Tenant for insurance premiums, legal expenses, management expenses, utilities, fuel, repairs and maintenance, accounting, statistical

or bookkeeping services or equipment, salaries, advertising and promotion, commissions and other compensation for leasing, alterations and repairs to make space ready for Occupancy Tenants, other charges for operation and management of the Property; and amounts paid to a reserve account, actually maintained by Tenant and held by the Depository, for replacements and capital improvements provided, that, with respect to any such reserve account:

- i) the amount deposited therein in any Lease Year shall not exceed two percent (2%) of Gross Revenues for such Lease Year, and
- ii) withdrawals made therefrom shall only be for the purpose of paying for a replacement or capital improvement item permitted above as an Allowed Deduction.

(b) Payments made by Tenant to Landlord of Base Rent;

(c) An amount computed by multiplying Total Project Costs by thirteen per cent (13%), or such other percentage as Landlord may hereafter approve in writing incident to its approval under Section 23.4 of a Leasehold Mortgage securing financing in excess of Total Project Costs and its receipt of Net Refinancing Proceeds arising from such financing.

Allowed Deductions shall be computed on a cash basis in accordance with generally accepted accounting principles consistently applied.

(4) The term "Net Refinancing Proceeds" shall mean the gross proceeds of any borrowings (other than the initial construction loan, but only to the extent the same does not exceed Total Project Costs) by the Tenant which are secured in whole or in part by the Property (or portion thereof) less the sum of: (i) any amounts used to discharge existing indebtedness of the Tenant secured by a Leasehold Mortgage on the Property (or portion thereof) being financed, and (ii) reasonable expenses incurred in connection with such borrowing;

D. In order that Landlord may receive the Percentage Rent required hereunder in equal monthly installments during each Lease Year, Tenant agrees to submit to Landlord not less than sixty (60) days prior to the beginning of each Lease Year a budget (the "Percentage Rent Budget") which shall set forth a detailed projection (using the foregoing definitions and setting their computations out in separate calculations) of Percentage Rent for the next ensuing Lease Year. Except as provided below in the event that Landlord shall dispute the reasonableness of the Percentage Rent Budget, Tenant shall pay to Landlord, as Percentage Rent, commencing on the first day of the first month of such next ensuing Lease Year and thereafter continue to pay to Land-

lord on the first day of each month of such Lease Year, an amount equal to one-twelfth (1/12th) of the Percentage Rent projected in such budget, or one-twelfth (1/12th) of the actual Percentage Rent due Landlord for the preceding Lease Years, whichever is greater, but only if the greater figure does not exceed the lesser figure by more than twenty per cent (20%); otherwise, payments shall be based on the lesser figure plus twenty per cent (20%) thereof.

Landlord may at any time within sixty (60) days after the receipt of the Percentage Rent Budget make such investigations and inquiries as Landlord determines to be appropriate in order to evaluate the reasonableness thereof (including without limitation, an audit and/or examination of the books and records of Tenant with respect to all financial matters relevant to the operation of the Property). Should Landlord determine that the Percentage Rent Budget understates the amount of Percentage Rent reasonably to be anticipated for the next ensuing Lease Year, Landlord may make a revised estimate of the Percentage Rent anticipated for such Lease Year and, based thereon, Tenant shall increase its monthly payments of Percentage Rent for the remainder of such Lease Year so as more accurately to reflect Percentage Rent as estimated by Landlord to be due for such next ensuing Lease Year.

E. Within ninety (90) days after the end of each Lease Year, Tenant shall furnish to Landlord a detailed,

true, correct and complete statement (the "Year End Financial Statement") of all income, expenses, and other financial matters reasonably necessary to determine, and setting forth a calculation of, the amount of Net Cash Flow of the Property and of the Percentage Rent due Landlord for the immediately preceding Lease Year, prepared in conformity with the requirements of this Lease by an independent certified public accounting firm selected by Tenant and approved by Landlord. If the Year End Financial Statement shows a deficiency in the payment of Percentage Rent for the preceding Lease Year, Tenant shall promptly pay such deficiency and if the Year End Financial Statement shows an overpayment of Percentage Rent, the amount of such overpayment shall be credited against payment of Base Rent, Percentage Rent and additional rent next falling due hereunder, but reserving in the Landlord the right, in all events, first to offset against such overpayment any sums owing but unpaid by Tenant to Landlord under this Lease.

F. At the time Tenant delivers to Landlord the Year End Financial Statement, Tenant shall also deliver a statement setting forth the name of each current Occupancy Tenant, the term of the leases under which Occupancy Tenants hold possession, the rental being paid under said leases, the square footage and location of the areas subject to said leases, and such additional information as Landlord may require.

G. Landlord reserves the right to conduct an inde-

pendent audit of Tenant's records regarding all matters relevant to the Property to ascertain of any Year End Financial Statement submitted. This independent audit may be conducted at any two (2) years of the end of any Lease Year and by an accounting firm of Landlord's choice. Such audit shall be conducted by a nationally recognized firm (or by an independent certified public accountant selected by Landlord and approved by Tenant, which shall not be unreasonably withheld) and if the Cash Flow as shown on such independent audit shows more than five percent (5%) that shown in any such Financial Statement submitted by Tenant, the Tenant shall pay the total cost thereof; otherwise, the cost of audit shall be borne by Landlord.

H. For purposes of this Lease, a Lease Year shall mean a calendar year commencing January 1 and ending December 31 next following, except that the first Lease Year shall commence on the Lease Commencement Date and the Lease Year shall end on the date the term of this Lease terminates or expires.

I. On or before the 15th day of each April, October and January during the term of this Lease, Tenant shall deliver to Landlord a statement itemizing the Revenue and the Allowed Deductions during the quarter period just ended (i.e., the quarter-annual periods ending, respectively, March 31, June 30, September 30 and

31) together with a statement as to any (i) Occupancy Tenants terminated and/or cancelled, and (ii) new Occupancy Tenants created, and (iii) such other information as may be relevant to computation of amounts due Landlord hereunder.

3.2 It is the intention of the parties hereto that the rent provided for in this Article shall be absolutely net to Landlord throughout the term of this Lease. Except for any debt service charges incurred in connection with financing obtained by Landlord on its reversion hereunder or interest herein and except as otherwise expressly provided in this Lease, in order that such rent shall be absolutely net to Landlord, Tenant shall pay and save Landlord harmless from and against all Impositions, insurance premiums, carrying charges, costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, leasing or operation of the Property which may arise, accrue or become due during the term of this Lease.

ARTICLE 4

PAYMENT OF TAXES AND OTHER CHARGES

4.1 Commencing on the Lease Commencement Date and continuing for the entire term of this Lease, as part of the consideration of this Lease and as additional rent hereunder Tenant agrees to pay and discharge or cause to be paid and discharged promptly as the same become due and payable, all taxes, assessments, charges, license fees, municipal liens, levies, excise taxes or imposts, whether general or special, ordinary or extraordinary, imposed by any governmental

authority as a result of or with respect to the ownership or use of the Leased Premises or the Improvements or the Building Service Equipment located thereon which may be levied, assessed, charged or imposed, or may be or become a lien or charge upon the Property, or any part thereof or upon the leasehold estate hereby created, or upon the Landlord solely by reason of its ownership of the Leased Premises (hereinbefore and hereinafter termed an "Imposition"). If at any time during the term of this Lease the methods of taxation or assessment or rate determination applicable to real estate prevailing at the Lease Commencement Date shall be altered so that in lieu of any Imposition described in this paragraph there shall be levied, assessed or imposed an alternate tax, however designated, such alternate tax shall be deemed an Imposition for the purposes of this Lease (including this Article) and Tenant shall pay and discharge such Imposition as provided by this Article. Nothing in this Lease contained shall be construed as imposing upon Tenant any obligation to pay any income, estate, inheritance, succession, capital levy or transfer tax imposed on the Landlord and growing out of or levied in connection with the Landlord's right in the Leased Premises.

4.2 Any Impositions required to be paid by Tenant which shall relate to the Lease Year during which the term of this Lease shall commence or terminate shall be prorated between Landlord and Tenant as of the date of such commencement or termination. Tenant shall pay all assessments and

charges of every type whether general, special, ordinary or extraordinary, which are assessed or levied against or with respect to the Property during the term of this Lease. If the law expressly permits the payment of such assessments or levies in installments, Tenant may utilize the permitted installment method, but shall pay each installment thereon before delinquency. If Tenant shall have permitted or elected to have such assessments or levies made payable in installments over a period of time which extends beyond the date this Lease expires or otherwise terminates the entire unpaid balance of such assessments or levies against the Property during the term hereof and applicable to the period of the leasehold estate created hereby shall be paid by Tenant prior to the expiration of the term hereof or upon any earlier termination of this Lease by depositing such unpaid balance in cash with Landlord, except to the extent that any Occupancy Tenants are required to pay such amounts pursuant to the terms of subleases allowed hereby.

4.3 Tenant shall regularly, and in any event on Landlord's request, deliver to Landlord copies or duplicate receipts (or, if the same are not available, other materials acceptable to Landlord) showing timely payment of all Impositions paid by Tenant as required by this Lease.

4.4 Tenant shall make all payments of all Impositions directly to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

4.5 In the event that the Leased Premises are not separately taxed or assessed, then, in that event, the Imposition as levied shall be apportioned between the Leased Premises and such other areas with which it is assessed in such manner that Tenant shall pay only an equitable portion of any such Imposition.

4.6 Subject to the provisions hereof, Tenant shall have the right to contest or review by appropriate legal or administrative proceedings, any Imposition or other charge or levy which Tenant is required to pay pursuant to the provisions of this Article.

Whenever the Tenant desires to contest the amount or validity of any Imposition after it has become payable, as in this Article provided, and prior to the payment thereof, it shall first give written notice to the Landlord of its intention to do so, and, at the option of the Landlord, the Tenant shall, from time to time during the pendency of such proceedings, deposit with the Depository (as hereinafter defined), as security for the payment of such Imposition, money or other security reasonably satisfactory to the Landlord in amount sufficient, in the reasonable judgment of the Landlord, to pay said Imposition, together with all interest and penalties in connection therewith, and all charges that may be assessed against or become a charge on the Property or any part thereof, in said proceedings. Any moneys so deposited by Tenant and the reasonable cost of providing such security shall be an "Allowed Deduction" at

the time paid or incurred for purposes of the calculation of "Net Cash Flow" under Section 3.1C, provided, that, when the need for such security terminates, such moneys (or the balance thereof not previously applied in payment of an Imposition) shall be treated as Gross Revenue under Section 3.1.C(2). If the Tenant shall not have theretofor paid, removed and discharged the Imposition and the interest and penalties in connection therewith, and the charges accruing in such proceedings, then, upon the termination of such proceedings, the money or other security so deposited (together with any interest on any security deposited hereunder) shall at the direction of the Landlord be applied to the payment, removal and discharge of said Imposition, if any, then payable and the interest and penalties in connection therewith, and the charges accruing in such proceedings, and the balance, if any, shall be paid or returned to the Tenant, but reserving in the Landlord the right, in all events, to direct that the money or other security so deposited (together with any interest on any security deposited hereunder) be paid to it in order to offset against such balance any sums owing but unpaid by Tenant to Landlord under this Lease.

In the event that the money or other security so deposited shall be insufficient for this purpose, the Tenant shall, forthwith, pay over to the Depository an amount of money sufficient (in Landlord's reasonable opinion), together with the money or other security so deposited pursuant to this Section 4.6, to pay the same.

Nothing in this Article, except as hereinabove provided, shall be construed as relieving, modifying or extending the Tenant's covenant to pay any such Imposition and all other charges incident thereto at the time and in the manner in this Article provided.

4.7 The Landlord shall join in any such proceeding where such joinder shall be necessary in order properly to prosecute such proceeding and the Landlord shall have first been fully indemnified against all liability in connection therewith. The Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by the Tenant, and the Tenant covenants to indemnify and save harmless the Landlord from any such costs or expenses, including reasonable legal fees.

4.8 The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such Imposition, of the non-payment of any such Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

4.9 The Tenant shall also pay or cause to be paid all taxes or excises on rent and income received by the Tenant from Occupancy Tenants, all permit, inspection and license fees, franchise or transfer taxes and all other public charges, however described, made or imposed by the City of Boston, the federal government or other public authority by reason of or in respect of the Tenant's interest in this

Lease transaction or any document to which the Landlord and the Tenant (or the Tenant alone) is a party, creating or transferring an interest or estate in the Property or any part thereof; or by reason or in respect of the business of the Tenant or the occupancy, use or possession of the Property, or any part thereof, or of any sidewalk, street or alley, or part thereof, adjoining the same, including any permit and inspection fees, or taxes or other public charges made or imposed upon the Landlord as owner of the Leased Premises by reason of the Tenant being engaged in the business of renting or leasing the Leased Premises.

4.10 It is the express intent of the parties that the Property be fully taxable to the Tenant as if the Tenant were the fee owner thereof, notwithstanding any law or regulation to the contrary, and the Tenant hereby agrees to make no claim or take any action the purpose of which would be to claim that the Property is exempt, directly or indirectly, from taxation. If the Property shall for any reason be treated as so exempt, the Tenant shall pay, in semi-annual payments on January 1 and July 1 of each Lease Year, a sum which would equal the amount of taxes that would be reasonably levied against the Property but for its tax exempt status, as if the Tenant were the fee owner thereof, and all such payments shall be Impositions for all purposes of this Lease including this Article 4 and the calculation of Net Cash Flow under Section 3.1C. Such sum shall be payable as additional rent and shall be determined by the

Landlord using, as the basis therefor, the amount of taxes assessed against reasonably comparable properties in the City of Boston.

ARTICLE 5

POSSESSION, USE, COMPLIANCE WITH LAWS, MAINTENANCE AND REPAIRS

5.1 Possession of the Leased Premises shall be delivered by Landlord to Tenant upon the Lease Commencement Date free and clear of all tenants and occupants and also free of all liens and encumbrances, all except for those matters disclosed in the Permitted Exceptions set forth in Exhibit "B" and such other liens, rights or encumbrances as the Tenant may have approved in writing. The Leased Premises are to be delivered in their present condition, "as is", it being agreed that the Tenant has had opportunity to examine the same in all respects (including subsurface conditions and utilities), that the Landlord has made no representations or warranties of any kind with respect to such condition and that the Landlord shall have no obligation to do any work on or with respect to the Leased Premises, or the condition thereof.

5.2 The Leased Premises and the Improvements shall continuously and without interruption be used and devoted solely to a mixture of office, retail and commercial space and parking accessory thereto, all in accordance with legal requirements from time to time applicable thereto and for no

other purpose or purposes. Space at the ground level and on the second floor level shall be devoted to commercial uses consisting principally of retail sales and services, unless Landlord shall otherwise specifically approve in writing which approval shall not be unreasonably withheld or delayed.

5.3 The Tenant agrees throughout the term of this Lease, at the Tenant's sole cost and expense, properly to maintain, or cause to be maintained, the Property and each and every part thereof in good order and condition in all respects, subject to reasonable wear and tear (but not obsolescence) free of accumulation of dirt, rubbish, snow and ice, and to make all necessary repairs, interior and exterior, structural and non-structural, ordinary as well as extraordinary, foreseen as well as unforeseen, in order to maintain the Property as required hereby. When used in this Article, the term "repairs" shall include replacements or renewals when necessary, and all such repairs made by the Tenant shall be at least equal in quality and class to the original work. The provisions and conditions of Section 13.2 and 13.4 of Article 13 hereof applicable to changes or alterations shall, mutatis mutandis, apply to maintenance and repairs required under this Section.

5.4 The Tenant agrees throughout the term of this Lease, at the Tenant's sole cost and expense, promptly to comply with, and cause the Property to be maintained in conformity with, and not in violation of, all laws and ordinances (including, without limitation, the provisions of

the Plan, as hereinafter defined) and the orders, rules, regulations and requirements of the federal, state and city governments and appropriate departments, commissions, boards, bureaus, agencies and offices thereof, and the orders, rules, regulations and requirements of the water, sewer, electrical or other inspection departments of the City of Boston and the Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions), whether such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not the same require structural repairs or alterations. The Tenant will, likewise, observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with reference to the Property (or improvements thereon). The provisions and conditions of Sections 13.2 and 13.4 of Article 13 hereof applicable to changes or alterations shall, mutatis mutandis, apply to work required to be done under this Section.

The Tenant shall not, however, be in violation of the foregoing requirements when, in good faith, it contests, by appropriate legal proceedings, the validity or applicability of any law, ordinance, order, rule, regulation or requirement of any governmental agency and, unless civil or criminal liability against the Landlord may result therefrom, the Tenant may delay compliance therewith until the final determination of such proceeding, provided, in the case of any contest and delay in compliance:

(a) the Tenant shall notify the Landlord forthwith, upon notice or knowledge of any violation or alleged violation of any such law, ordinance, order, rule, regulation or requirement, and of its intention to contest the same; and, thereafter, shall, from time to time, and on the request of the Landlord, advise the Landlord of the status of any such proceedings;

(b) the Tenant shall indemnify, save harmless and defend the Landlord (with counsel of Tenant's selection, but subject to approval by Landlord which shall not be unreasonably withheld), from any loss, cost, liability or expense which may be incurred by the Landlord by reason of such non-compliance or delay;

(c) the Tenant shall prosecute such contest of validity or applicability to conclusion with all due diligence; and

(d) the Tenant shall pay over to the Depository, on the request of the Landlord, security for the faithful performance and observance of its obligation to comply with any such law, ordinance, order, rule, regulation or requirement, and for the payment of any penalties which may accrue by reason of non-performance or delay in compliance therewith, if it should be finally determined that the same is valid and applicable.

The provisions of Section 4.6 hereof (relative to the contest of Impositions) shall be applicable, mutatis mutandis, to the time, amounts and kind of security which the Landlord may require under this Section, and the holding and disposition of the same, to the end that, for this purpose, the cost and expense of possible compliance with governmental requirements aforesaid shall be treated as an Imposition.

5.5 The Tenant agrees to indemnify, defend (with counsel of the Tenant's selection, but subject to approval by Landlord which shall not unreasonably be withheld), and save harmless the Landlord against and from any and all claims by or on behalf of any person, firm or corporation, arising during the term of this Lease or any period in which Tenant shall occupy any part or all of the Property from the conduct or management of or from any work or thing whatsoever done in or about the Property, and will further indemnify, defend (with counsel of the Tenant's selection, but subject to approval by Landlord which shall not unreasonably be withheld), and save harmless the Landlord against and from any and all claims arising during (even though asserted after) the term of this Lease from any condition of the Property, or arising from any breach or default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed under the terms of the Lease, or arising from any act or neglect of the Tenant or any of its agents, contractors, servants, employees or

licensees, or anyone claiming by, through or under the Tenant, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease, in or about the Property.

Notwithstanding the foregoing, nothing herein shall obligate the Tenant to indemnify, defend or save harmless the Landlord from any claims arising solely out of the negligence or default of Landlord, its agents, contractors, servants, or employees.

5.6 The Tenant agrees to pay and be liable for the payment of all costs and charges, including the reasonable fees of counsel engaged by the Landlord, incurred in exercising rights of the Landlord under this Lease on account of any default or breach of condition by the Tenant, or occurrence of condition which, under this Lease, confers upon the Landlord the right to exercise remedies available to the Landlord in the event of default of the Tenant, including, without limitation, such costs and expenses incurred in enforcing the Landlord's right to possession of the Property after the expiration or earlier termination of the term of this Lease.

5.7 For the purposes of this Article, sidewalks which adjoin or abut the Leased Premises and the areas which the Tenant is obligated to maintain under Article 32 hereof shall be treated as a part thereof and, to the maximum extent permissible according to law, the Tenant shall maintain the same in good order and condition throughout the term of

this Lease, free of accumulation of dirt, rubbish, snow and ice. To the extent that legal liability for maintenance thereof is imposed upon any private owner of property in the jurisdiction in which the Leased Premises lies, the Tenant shall perform the obligations on the part of any such owner required to be performed under applicable law, which obligation shall extend to any other public areas, such as streets and vaults, adjoining the Leased Premises, for which, under applicable law, a private owner of property abutting the same may be responsible.

ARTICLE 6

CESSATION OF USE; NO ABATEMENT OF RENT

6.1 Except as otherwise specifically provided in this Lease, this Lease shall not be terminated, the respective obligations of the parties shall not be affected and no abatement, refund, offset, diminution or reduction of Base Rent, Percentage Rent or amounts due as additional rent shall be claimed by or allowed to Tenant, or any person claiming by, through or under Tenant, under any circumstances whatever, whether for inconvenience, discomfort, interruption, cessation or loss of business, or otherwise, or whether arising from the making of alterations, changes, additions, improvements or repairs to any buildings or other Improvements now on, under or above or which may hereafter be erected on, under or above the Leased Premises, or whether by virtue or because of any present or future governmental

laws, ordinances, regulations, direction or action or for any other cause or reason whatsoever and whether or not stated in or implied by the foregoing.

ARTICLE 7

DESIGN REVIEW; CONSTRUCTION OF IMPROVEMENTS;

CERTIFICATE OF COMPLETION

7.1 Landlord acknowledges that, prior to the execution of this Lease, Tenant has submitted to Landlord and Landlord has approved the following plans with respect to the Improvements initially to be constructed on the Leased Premises (the "Initial Improvements", which shall also be considered as Improvements for the purposes of this Lease unless such meaning would be repugnant to the context in which such term appears):

(a) the Schematic Design;

(b) the Design Development;

(c) the Preliminary Working Drawings and Outline Specifications;

(d) the Final Working Drawings and Specifications; all of which are more specifically identified in Exhibit "C" attached hereto and which are incorporated herein and made a part hereof.

7.2 Tenant shall not apply for a building permit with respect to all or any part of the Initial Improvements or with respect to any changes or alterations requiring Landlord's approval under Section 8.1 hereof without the prior certification of Landlord that the work to be done or completed as

set forth in the permit application is in accordance with said Final Working Drawings and Specifications, as initially approved by Landlord or as subsequently amended and approved in writing by Landlord. No work shall be done with respect to all or any part of the Initial Improvements or with respect to such changes or alterations unless such work conforms in every respect with such approved or amended and approved Final Working Drawings and Specifications.

7.3 With respect to the Initial Improvements only:

(a) The Tenant shall begin the construction of the Initial Improvements in accordance with the approved Final Working Drawings and Specifications as soon after the Lease Commencement Date as is reasonably practicable.

(b) The Tenant shall diligently prosecute to completion the construction of the Initial Improvements and shall complete such construction not later than thirty (30) months from the first to occur of the Lease Commencement Date or the date on which any work is started on the Leased Premises relating to construction of the Initial Improvements, as such period may be extended pursuant to the provisions of Section 7.9 hereof, or such additional time beyond such thirty (30) month period (as such 30 month period may be extended pursuant to Section 7.9 hereof) as may be approved by Landlord, which approval shall not be unreasonably withheld. Withholding of consent requested because of financial difficulties shall not be treated as unreasonable action by Landlord.

(c) Tenant shall submit to Landlord for its approval a detailed estimated progress schedule at the time construction of the Initial Improvements is begun in a format generally used in large scale urban construction projects. This schedule shall be resubmitted each month until the construction of the Initial Improvements has been completed, with actual progress shown in each submission. This monthly submission shall be accompanied by a written report by Tenant citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts. Such work of Tenant shall be subject to inspection by representatives of Landlord, and Landlord shall endeavor to notify Tenant promptly of any respects in which Landlord observes that Tenant is not proceeding with construction of the Initial Improvements as required by this Lease and shall promptly furnish to Tenant copies of all reports prepared by representatives of Landlord in connection with such inspections. Upon receipt of such notification, Tenant shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of Landlord. Nothing herein shall be treated as allowing the Tenant an extension of time deadlines, without Landlord's prior written consent, (except as provided in Section 7.9 hereof), nor shall Landlord's inspections or actions or failure to act hereunder render Landlord liable to Tenant or any other party for failure of the Initial Improvements to be constructed as required by

the terms of the Lease.

(d) No change order or modification (referred to hereinafter as "Change Orders") which would result in an addition to or extension of the Initial Improvements (as shown on the Final Working Drawings and Specifications) or which would change the approved materials, design, dimensions or color of the Initial Improvements or which would affect in any way the external appearance of approved public lobbies, arcades, open spaces, landscaping, or the external appearance of any building (including roof and penthouse) shall be issued or implemented unless such Change Order shall have been submitted to and approved in writing by Landlord prior to its issuance and implementation. If Landlord shall neither approve or disapprove in writing within ten (10) days of receipt by it of a notice containing such Change Order, then it shall be treated as having been disapproved. In the event Tenant shall fail to comply with the foregoing requirements, Landlord may, within a reasonable time after discovery thereof by Landlord, direct in writing that Tenant modify or reconstruct such portion or portions of the Initial Improvements erected or being erected as are not in conformance with the approved Final Working Drawings and Specifications or any approved modifications thereof, or Change Order therefor, so as to bring them into conformance therewith. Tenant shall promptly comply with such a directive. In addition to any other remedies available under this Lease,

Landlord may enforce the provisions of this subsection (d) by an action in a court of appropriate jurisdiction to compel specific performance. Tenant shall send Landlord a copy of any other change order or modification relating to the Initial Improvements as soon as the same has been approved by the Architect.

7.4 Tenant shall not discharge the Architect or General Contractor without cause or hire new or additional architects or general contractors or substantially alter or substantially amend the contract for architectural services between the Architect and the Tenant and the Architect or the construction contract between the Tenant and the General Contractor without in each instance obtaining the prior written consent of Landlord.

7.5 No sign shall be erected or placed on the exterior of any Improvement on the Leased Premises, or on any portion of the Leased Premises which is not enclosed within a building, or which is visible to the public from outside a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by Landlord in writing. Without limiting in any way the scope of Landlord's review, no sign shall be approved which does not meet the following standards. Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual ground floor use. Flashing signs, and signs relating to businesses other than those on the Leased Premises, shall not be permitted. All allowed

signs shall conform to applicable laws and regulations, including the Boston Sign Code.

7.6 Tenant shall provide as part of the Initial Improvements, and off-site work performed by Tenant (including without limitation, work within the areas referred to in Exhibit E) in connection with and relating to the construction of the Initial Improvements, works of art reasonably satisfactory to Landlord and shall expend for such works of art a sum at least equal to one percent (1%) of the Total Project Costs. In this connection, Tenant shall include in the Final Working Drawings and Specifications submitted to Landlord a general program for employment of art to support and enhance the Initial Improvements. The term "works of art" as used herein shall include ornaments, arrangements, or effects created through the use of sculpture, bas-reliefs, mosaics, frescos, murals, prints, tapestries, paintings, fountains which are sculptural in themselves or designed to enhance the setting of the sculpture, and non-standard street and open space treatments and other improvements having an increment of aesthetic value as approved by Landlord.

7.7 It is the general policy of Landlord that all new buildings constructed in urban renewal project areas shall be so designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Tenant's obligation to comply with all legal requirements applicable thereto, the Final Working Drawings and Specifications shall include provisions conforming

insofar as practicable with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which Specifications, as amended from time to time, are hereby incorporated herein by reference. Landlord shall take into consideration the provisions and objectives of such Specifications in its review of and action upon the Final Working Drawings and Specifications.

7.8 Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or at the request of Tenant from time to time during the term of this Lease all necessary safeguards for the protection of workmen and the public.

7.9 Tenant agrees for itself and every successor in interest to the leasehold estate in the Leased Premises, or any part thereof, that Tenant will take all steps necessary to enable it to, and that it will, commence construction of the Initial Improvements, and that it will diligently prosecute and complete the same, in accordance with the times set forth therefor in Section 7.3(a) and (b) hereof; provided, however, that Tenant's obligations under Sections 7.3(a) and (b) hereof are subject only to delays occasioned by acts of God, general unavailability of labor or materials, governmental restrictions, strikes and other labor difficulties not caused by Tenant or like causes beyond the reasonable control of the Tenant, but financial inability to proceed

shall never be treated as a cause beyond the Tenant's reasonable control.

It is intended and agreed that the agreements and covenants contained in Section 7.3 hereof shall be covenants running with the land and that they shall be, in any event, and without regard to technical classification or designation, legal or otherwise, and, except only as otherwise specifically provided in this Lease, to the fullest extent permitted by law and equity, binding for the benefit of the community and Landlord and enforceable by Landlord against Tenant and every successor in interest to or of the leasehold estate in the Leased Premises or any part thereof or any interest therein.

Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits, or variances which may be required for the construction of the Initial Improvements, but this obligation shall not require the expenditure of any monies by Landlord, (including, without limitation, expenditures for permits or approvals of any type).

7.10 Landlord shall during the term of this Lease comply with the terms and provisions of the Cooperation Agreement relating to the Plan between it and the City of Boston, dated June 24, 1964 (which is hereby incorporated herein by reference) and shall enforce all of its rights thereunder, to the extent such enforcement shall be necessary

in Tenant's reasonable judgment to enable Tenant to meet its obligations hereunder.

7.11 The Initial Improvements shall be deemed completed for the purposes of this Lease when such Initial Improvements have been substantially completed in accordance with the approved Final Working Drawings and Specifications, as modified by any Change Order approved by Landlord.

Promptly after such substantial completion of the Initial Improvements in accordance with the provisions of this Lease, the Landlord will furnish the Tenant with an appropriate instrument so certifying (hereinafter the "Certificate of Completion"). Such certification by the Landlord shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Lease with respect to the obligations of the Tenant and its successors and assigns to commence and complete the Initial Improvements, except that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Tenant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Initial Improvements or any part thereof.

Tenant agrees that Landlord shall be under no obligation to issue a Certificate of Completion until such time as the Landlord has had a reasonable opportunity to inspect the Initial Improvements constructed pursuant to the provisions of this Lease, the Final Working Drawings and Specifications, (as modified by any Change Order approved by Landlord)

provided, however, that the Landlord shall not be required to make an inspection hereunder unless the Tenant has requested by written notice to Landlord requesting that it issue a Certificate of Completion.

If Landlord shall refuse or fail to issue a Certificate of Completion in accordance with the provisions of this Section 7.11, Landlord shall, within thirty (30) days after receipt by Landlord of a notice containing a written request by Tenant, provide Tenant with a written statement, indicating in adequate detail in what respect Tenant has failed substantially to complete the Initial Improvements in accordance with the provisions of this Lease, and what measures or actions will be necessary, in the opinion of Landlord, for Tenant to take or perform in order to obtain a Certificate of Completion. If Landlord shall refuse or fail to provide Tenant with such a written statement within thirty (30) days of a request therefor by Tenant, the Certificate of Completion shall be deemed to have been issued.

ARTICLE 8

CHANGES AND ALTERATIONS

8.1 After the Initial Improvements required by this Lease to be constructed by the Tenant on the Leased Premises or any portion thereof have been completed, the Tenant shall not without the prior written approval of Landlord reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions, or color thereof, nor permit the same by any Occupancy

Tenant or any other person, if such reconstruction, demolition, subtraction, addition, extension or change would affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) except that the restoration of the Improvements after a casualty or eminent domain taking to the condition required to exist prior to such event shall not require Landlord's approval.

8.2 In requesting such approval, Tenant shall submit to Landlord for its approval such plans, specifications, and other materials for the proposed work as are required by the Design Review Procedure attached as Exhibit "D" to this Lease, all within such reasonable time limits as Landlord shall require therefor.

8.3 If Landlord shall consent to any alteration, addition, change or modification requiring such consent under Section 8.1 hereof, the same shall be accomplished by Tenant in compliance with these requirements:

(a) No work shall be undertaken until the Tenant shall have produced and paid for, or caused to be paid for, so far as the same may be required from time to time, all governmental permits and authorizations of the various governmental agencies having jurisdiction.

The Landlord agrees to join in the application for such permits or authorizations, whenever such action is necessary, but at the Tenant's sole cost and expense.

(b) No work shall be undertaken until Tenant shall have presented evidence acceptable to Landlord of Tenant's ability to pay for the cost thereof.

(c) Any work, the cost of which is reasonably estimated at one hundred fifty thousand dollars (\$150,000) or more, shall not be undertaken or permitted, except after compliance with the requirements of Article 13, below.

8.4 If the Tenant shall fail to comply with the foregoing requirements of this Article 8, the Landlord may, without limiting other remedies available to it, direct in writing that the Tenant modify, reconstruct or remove any work done without the prior written approval of the Landlord. The Tenant shall promptly comply with such a directive, and shall not proceed further with any work until such directive is satisfied.

ARTICLE 9

MECHANICS' AND OTHER LIENS

9.1 The Tenant agrees that it shall not suffer or permit any mechanics', laborers', materialmen's or other liens to attach against or be filed against the Property or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to or on behalf of the Tenant or to anyone claiming by, through or under the Tenant (Landlord and Tenant hereby expressly agreeing that Landlord shall have no liability whatsoever on account of any such liens, such liability being hereby

expressly denied and prohibited). If any mechanics', laborers', materialmen's or other liens shall at any time be filed against the Property, or any part thereof, the Tenant shall cause the same to be discharged of record within forty-five (45) days after the date of filing the same unless, within such forty-five (45) day period, the Tenant shall furnish the Landlord with satisfactory evidence that it has instituted appropriate legal proceedings to contest any such lien which will prevent the enforcement thereof prior to the final determination of such proceedings and has deposited with the Depository, or, with the Court in which the lien is being contested, money in an amount sufficient in Landlord's reasonable opinion from time to time to assure payment of the lien, together with interest, penalties, court costs and attorneys' fees arising in such proceedings, or a surety bond reasonably satisfactory to Landlord, for an amount sufficient to guarantee the payment of such lien, together with interest, penalties, court costs and attorneys' fees.

9.2 The Tenant agrees diligently to prosecute such proceedings to a final determination or conclusion. If the Tenant shall fail to discharge such mechanics', laborers', materialmen's or other liens within such period or, in the event it desires to contest such lien by appropriate legal proceedings, fails to comply with any of the foregoing requirements in connection therewith and diligently to prosecute such proceedings to a final determination or

conclusion, then, in addition to any other right or remedy by the Landlord, the Landlord may, but shall not be obligated to, discharge the same either by requiring the Depository to pay (to the extent of the monies hereby held by it) the amount claimed to be due or by procuring the discharge of such lien by deposit in Court or by giving security or in such manner as is, or may be, prescribed by law. Any amount paid by the Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of the Landlord, incident to obtaining the discharge of such liens, with all necessary disbursements in connection therewith, with interest thereon at the rate hereinafter set forth from date of payment, shall be paid by the Tenant to the Landlord on demand, and, if unpaid, may be treated as additional rent due hereunder.

Nothing in this Article contained shall imply any consent or agreement on the part of the Landlord to subject the Landlord's estate to liability under any mechanics', materialmen's or other lien law.

ARTICLE 10

INSURANCE

10.1 The Tenant shall, at the Tenant's sole cost and expense, keep the Improvements, the Building Service Equipment (but not including movable trade fixtures, machinery and equipment), insured in the name of the Tenant and the Landlord and the Leasehold Mortgagee, if required by the Leasehold Mortgage (and if the Leasehold Mortgagee agrees that the

proceeds thereof shall be applied in accordance with the provisions of this Lease), as their respective interests may appear: (1) against loss or damage by fire and (2) against such other risks as Landlord may reasonably require and as are now or may hereafter be covered on buildings similar in construction, general location, use and occupancy, to the Improvements, including, but without limiting the generality of the foregoing, collapse, windstorm, hail, explosion, riot and civil commotion, damage from aircraft and vehicles and smoke damage, together with so-called demolition and increased cost of reconstruction coverage, as and when insurance against such risks is obtainable. The amount of insurance shall be equal to the replacement cost thereof (which shall mean actual replacement cost without deduction for physical depreciation), excluding excavation costs and costs of foundations, footings and underground installations. The replacement cost thereof shall be accepted by the company issuing such casualty loss policy and evidenced by an "agreed amount endorsement" or waiver of co-insurance, or other evidence satisfactory to Landlord. Not more frequently than annually, the Landlord shall have the right to notify the Tenant that it elects to have the replacement cost redetermined by the insurance company then providing coverage. The redetermination shall be made promptly in such manner as is acceptable to Landlord, the insurance company, and the Leasehold Mortgagee and each party shall be promptly notified of the results. The insurance policy shall be adjusted

according to the redetermination, and Tenant shall pay any increase in the premiums.

10.2 Tenant shall, at its sole expense, procure and maintain during the term hereof rent or rental value insurance naming Tenant and Landlord as insureds, as their interests may appear, in an amount equal to not less than one hundred percent (100%) of (i) the annual Base Rent due Landlord hereunder, and (ii) the annual Percentage Rent due Landlord hereunder (based upon the actual amount of Percentage paid Landlord for the most recent Lease Year preceding the date of the insurance contract).

10.3 The Tenant shall also maintain, at the Tenant's sole cost and expense, but for the mutual benefit of the Landlord and the Tenant, and in the name of the Landlord and the Tenant, and the Leasehold Mortgagee, if required by the Leasehold Mortgage:

(a) comprehensive general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Leased Premises or the Improvements or any elevators or escalators therein, and on, in or about the adjoining streets and passageways, such insurance to afford protection with combined single limit coverage of not less than One Million Dollars (\$1,000,000.00). Such insurance shall provide coverage not only on an accident basis but also on an occurrence basis; and such limits shall be subject to increase as Landlord may from time to time reasonably require;

(b) steam boiler insurance on all steam boilers, pressure boilers or other apparatus in such amounts as Landlord may from time to time reasonably require;

(c) war damage insurance (whenever such insurance shall be written by, through or with the aid of any governmental agency or authority and a state of war or public emergency exists) upon the Improvements and the Building Service Equipment to the replacement cost thereof (which shall mean actual replacement costs without deduction for physical depreciation), including foundations and underground installations, or to the maximum amount of coverage which may be obtained, if less than the replacement cost, as aforesaid;

(d) flood insurance in such amount as Landlord may reasonably require, if the Leased Premises shall be situated in an area designated by the United States Government, or any political subdivision thereof, as as "flood hazard area" or by whatever designation the result of which is to require such insurance coverage as a condition to obtaining or maintaining a federally insured mortgage loan or obtaining a mortgage loan from a federally regulated institution; and

(e) such other forms of insurance (including broadened coverage of existing insurance) and in such amounts as Landlord may from time to time reasonably require consistent with the requirements of institutional lenders with respect to like properties in Boston.

10.4 Every insured loss shall be adjusted and settled promptly by the Landlord and the Tenant, and the Leasehold Mortgagee, if the Leasehold Mortgagee is named as an insured on any policy as permitted by this Lease. All insurance proceeds and all amounts payable as a result of such settlements (collectively, "Proceeds") (less, in either case, costs, fees and expenses incurred in the collection thereof, which shall be paid out of such proceeds) shall be paid to the Depository and applied by it as hereinafter set forth.

10.5 Proceeds from rental insurance, less any cost of recovery, shall be applied to the Tenant's obligation for the payment of the Base Rent, Percentage Rent, additional rent and to satisfy any other unpaid obligation of Tenant to Landlord hereunder and the Tenant shall be relieved from its obligation to make such payments to the extent that such Proceeds are so applied. The balance of Proceeds, from rental insurance, if any, shall be paid first to the Leasehold Mortgagee as its interest shall appear and then to the Tenant if the Tenant is not then in default hereunder.

10.6 Proceeds attributable to any casualty, shall be applied by the Depository to the repair and restoration of Improvements and Building Service Equipment in accordance with the provisions of Article 11 and Article 13 hereof, or if the Proceeds shall be less than \$150,000 and the Tenant shall not be in default hereunder, such Proceeds shall be paid to the Tenant, which agrees to use the same to accomplish repair or restoration as required by this Lease and to

retain the balance, if any, after such repair or restoration as Tenant's absolute and unconditional property subject to the rights of any Leasehold Mortgagee, provided, however, that if this Lease should terminate because of the Tenant's default prior to the time that the Tenant has made or completed such repair or restoration, such Proceeds shall be paid to the Landlord as its absolute and unconditional property.

10.7 Other Proceeds shall be applied by the Depository as the Landlord and Tenant direct.

10.8 All policies of insurance hereinbefore referred to shall be written in companies authorized to do business in the Commonwealth of Massachusetts satisfactory to the Landlord, and shall be written in such form as shall be acceptable to the Landlord. All policies of insurance shall provide that the collectibility of insurance proceeds shall not be prejudiced by any act or negligence of the Tenant which might otherwise result in a forfeiture of said insurance, and notwithstanding the fact that the Landlord has agreed that the proceeds of such insurance shall be used in the restoration or rebuilding of Improvements and Building Service Equipment located upon the Leased Premises. All policies of insurance shall contain an agreement by the insurers that such policies shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the Landlord, the Leasehold Mortgagee and such other parties as may be named as insureds thereunder.

The Tenant shall deliver to the Landlord, on or before the commencement of the term of this Lease, all such policies of insurance (or certificates or certified copies thereof if the original of any such policy is required to be delivered to a Leasehold Mortgagee), in the amounts and covering the risks hereinabove provided, endorsed "Premium Paid" by the company or agency issuing the same, and the Tenant shall deliver to the Landlord, not less than thirty (30) days' prior to the expiration of any then current policy, a new policy in replacement thereof, endorsed "Premium Paid" by the company or agency issuing the same. However, if the insurance is carried under a blanket policy, as permitted by Section 10.10 hereof, the Tenant may deliver certificates thereof, specifying the amount of insurance allocated to the Property in lieu of the original policy, as long as the possession of such certificates confers upon the holder thereof the same rights as the holder would have if in possession of the original of such insurance policies.

10.9 During the course of any construction of the Initial Improvements or of any construction requiring Landlord's approval under Section 8.1 hereof, and in any other situation when such coverage may be appropriate, Tenant shall carry and pay, or cause to be carried and paid for (i) appropriate builder's risk insurance and (iii) owner's contingent or protective liability insurance naming

Landlord as an additional insured covering claims not covered by or under the terms of the above-required comprehensive public liability insurance, with combined single limit coverage of not less than One Million Dollars (\$1,000,000.00).

In addition thereto, at any other time when the Tenant maintains employees incident to operations on the Property, the Tenant shall also carry and pay for, or cause to be carried and paid for, workmen's compensation insurance in statutory amounts covering all persons (other than employees of the Landlord, if any), with respect to whom death or injury claims could be asserted against the Property or any part thereof, or the interests of the Landlord or the Tenant therein.

The Tenant shall deliver to the Landlord certificates of insurance evidencing all workmen's compensation insurance policies and renewals thereof, promptly as and when such policies are issued and renewed. The Tenant's fulfillment of the statutory requirements relating to self-insurance under workmen's compensation laws shall, upon proof of such compliance satisfactory to the Landlord, be treated as compliance with the workmen's compensation insurance requirements of this Article.

10.10 Any insurance required to be furnished by the Tenant may be effected by a policy or policies of blanket insurance, provided, however, that the amount of the total insurance allocated to the Property, as herein defined,

shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required, and provided, further, that, in all other respects, any such policy or policies shall comply with the other provisions of this Lease.

10.11 The aforesaid minimum limits of insurance policies shall in no event limit the liability of Tenant hereunder. Insofar as and to the extent that the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in Massachusetts (even though extra premium may result therefrom) Landlord and Tenant mutually agree that, with respect to any loss which is covered by insurance then being carried by them, respectively, the one carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. If, at the written request of one party, this release and non-subrogation provision is waived, then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective, but nothing contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either party for claims. Tenant shall bear all costs incurred by either party

in complying with this Section 10.11.

ARTICLE 11

DAMAGE TO OR DESTRUCTION OF THE PROPERTY

11.1 The Tenant agrees that, in case of damage to or destruction of any part of the Property by fire or otherwise, or should any part of the Property become untenable or unuseable for any reason, this Lease shall not terminate nor shall there be any abatement or reduction in the Base Rent, Percentage Rent, additional rent or other charges payable by the Tenant, nor shall the respective rights or obligations of the Landlord and the Tenant be affected in any way, except as specifically provided in this Lease.

The terms "damage or destruction", for the purposes of applying this provision of this Lease, shall refer to any condition requiring correction to make the Property, or any part thereof, tenantable or useable for its intended purposes.

11.2 The Tenant agrees that, in the event of any damage or destruction, the Tenant shall promptly notify the Landlord. Tenant, at its sole cost and expense, shall promptly repair, restore and rebuild the Property, or cause the same to be repaired, restored and rebuilt, so that, upon the completion thereof, the Property shall have been restored to the condition required immediately prior to such damage or destruction. The provisions and conditions of Article 13 governing procedures applicable to restoration, changes or alterations of Improvements shall be applicable to work

required to be done under this Article.

11.3 All Proceeds (except as otherwise provided in Section 10.5 with respect to rent insurance) shall be held and applied to the payment of the cost of repairing, restoring and rebuilding required by this Article in accordance with the provisions of Section 10.6 and Article 13 hereof.

ARTICLE 12

CONDEMNATION

12.1 With respect to any exercise of the power of eminent domain (hereinafter referred to as a "Proceeding") or any agreement in lieu of condemnation (hereinafter referred to in this Article as an "Agreement") between the Landlord, the Tenant and those authorized or purporting to be authorized to exercise the power of eminent domain, for a conveyance to a condemning authority (such conveyance being hereafter in this Article referred to as "conveyed" or as a "conveyance"), the Tenant and the Leasehold Mortgagee, in cooperation with the Landlord, shall have the right to participate in negotiations, any Proceeding or any Agreement leading to an Award (as hereinafter defined) to protect their respective interests hereunder. The total Net Award made in such Proceeding or the consideration paid or payable pursuant to such Agreement (hereinafter collectively or separately referred to as the "Award"), shall be paid by whomever received to the Depository, which shall apply the same as herein provided. The term "Net Award" shall mean

the total Award, less all costs, expenses and attorneys' fees incurred in the collection thereof.

12.2 If, during the term of this Lease, the entire Property shall be taken as a result of a Proceeding or an Agreement, this Lease and all right, title and interest of the Tenant hereunder shall terminate and come to an end on the date title shall vest in the condemning authority pursuant to such Proceeding or Agreement, but shall not terminate as to the Award. In that event, the rent, additional rent, Impositions or other charges herein provided to be paid by the Tenant shall be apportioned to the date title shall vest in the condemning authority in such Proceedings or pursuant to such Agreement and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by Landlord to the Tenant. As to any such taking, the Net Award shall be distributed as follows:

(a) The following values shall be determined as of the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement by agreement of the parties or, failing such agreement, by appraisal in the manner set forth in Section 12.2(c) hereof.

(x) The value of the Leased Premises. This shall be the then fair market value of the Leased Premises as encumbered by this Lease plus the residual value of the Improvements and the Building Service Equipment, all determined as if no taking had occurred.

(y) The value of the Improvements and the Building Service Equipment. This shall be the then fair market value of the Improvements and the Building Service Equipment, as encumbered by this Lease and recognizing that the residual value of the Improvements and the Building Service Equipment belongs to Landlord at the expiration of the term of this Lease, all determined as if no taking had occurred.

(b) After making the determinations described in subparagraph (a), above, the Net Award shall be applied as follows:

(i) First, to the Landlord as a first charge against the Net Award, an amount equal to the present value, (determined by using a discount rate equal to the rate of interest called for by Section 34.10 hereof) as of the date title is vested in the condemning authority, of the Base Rent until the Lease Expiration Date.

(ii) Second, for the account of the Tenant, as a second charge against the balance of the Net Award, an amount up to that amount which is in the same ratio to the amount paid the Landlord under paragraph (i) as the ratio of (y) representing Tenant's interest in the Net Award is to (x) representing Landlord's interest in the Net Award as determined above.

(iii) The balance, if any, shall be apportioned between the Tenant and the Landlord in the ratio of (y) to (x) as determined above.

(c) If the Landlord and the Tenant are unable to agree on the values to be determined under Section 12.2(a), the values shall be set by an independent panel of three appraisers each of whom shall have recognized expertise and not less than five years professional experience in the valuation of downtown, large-scale urban commercial real estate in the City of Boston, of whom one is to be selected by the Landlord, one is to be selected by the Tenant, and the third is to be selected by mutual agreement of the two first selected. Such appraisal shall be made at the request of either Landlord or Tenant, and shall be carried forward expeditiously once requested. Each party shall pay its own appraiser's fees and costs and one-half

of the fees and costs of the third appraiser.

12.3 If, during the term of this Lease, a part of the Property shall be taken or conveyed, and such taking or conveyance does not diminish the interior leaseable area of the Improvements, this Lease shall terminate as to the part of the Property which is taken, upon the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, but this Lease shall continue in full force and effect as to the remainder of the Property.

As to any such taking, the Net Award shall be distributed as follows:

(i) Subject to the provisions of Article 13 hereof, first to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing restoration of the Property and any other obligation under the Lease imposed upon Tenant as the result of the taking.

(ii) The balance, if any, of the Net Award shall be paid to the Landlord.

12.4 (a) If, during the term of this Lease, a part of the Property shall be taken or conveyed, and such taking or conveyance diminishes the interior leaseable area of the Improvements, this Lease shall terminate and come to an end as to the part of the Property which is taken, upon the date

title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, but shall not terminate as to the Award for the part of the Property which is taken, and otherwise this Lease shall continue in full force and effect as to the remainder of the Property, subject to the provisions of Section 12.4(b) hereof.

If there is a taking of the type provided for in this Section 12.4, then, as to the part of the Property not so taken, the Tenant covenants and agrees, for itself and its successors in interest, that the Tenant shall, at its sole cost and expense (subject to reimbursement to the extent hereinafter provided), promptly restore that portion of the Property not so taken to a complete architectural unit for the use and occupancy of the Tenant (and those claiming under Tenant) as in this Lease expressed. The provisions and conditions in Article 13 hereof applicable shall apply to the work required to be done under this Section. As to any such taking, the Net Award shall be distributed as follows:

(i) First to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing its obligations to restore pursuant to this Section and any other obligations under this Lease imposed upon Tenant as the result of the taking.

(ii) The balance of the Net Award, if any, shall be apportioned between the Landlord and the Tenant in the same manner as the balance of a Net Award apportioned under Subsection 12.2(b)(iii).

If there is a taking provided for in this Section and the restoration of the Property results in Improvements of lesser internal leasable area than the Improvements prior to the taking, Base Rent shall be abated from and after the date of taking in proportion to the diminution of the total internal leaseable area of the Improvements, but otherwise there shall be no abatement in or reduction of the rent or other charges.

(b) In the event a taking provided for in this Section 12.4 so diminishes or impairs the use of the Improvements that notwithstanding restoration the Tenant would be unable to make any kind of economic use of the remainder thereof, for the purposes permitted by this Lease, the Tenant, at its option exercisable by notice to Landlord given not later than ninety (90) days after title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, may terminate this Lease as of such date. The rent, Impositions or other charges herein provided to be paid by the Tenant shall be apportioned to said date and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the Landlord to the Tenant. In the event Tenant elects to so terminate this Lease, the Net Award shall be allocated and distributed in

the manner provided in Section 12.2, except that the value of Landlord's interest in the Net Award determined under Section 12.2(a)(x) shall be reduced by the value of the portion of the Leased Premises, the Improvements and the Building Service Equipment not taken and the amount to be applied under Section 12.2(b)(i) shall be reduced by the discounted fair rental value of the portion of the Leased Premises not taken for the unexpired portion of the term of this Lease.

12.5 If there shall be a taking or conveyance, as aforesaid, of any vault or other space not included within the Leased Premises as above described, or a taking or conveyance which shall result in the removal of projecting portions of any Improvements upon any street for which the Tenant is not entitled to compensation as a matter of law, or a taking or conveyance of an underground right-of-way for a subway, conduit or other purpose not necessitating the demolition or substantial alteration of any portion of any of the Improvements, any such taking or conveyance shall not be treated as a taking of any part of the Leased Premises or the Property for the purposes of this Article, this Lease shall not be effected by any such taking or conveyance of the nature in this Section 12.5 referred to, any alteration required because of a taking or conveyance of the nature in this Section 12.5 provided, shall be done by the Tenant, and the provisions and conditions of Article 13 shall apply to

any alteration required to be done under this Section.

12.6 If the use of the Leased Premises or the Improvements, or any part thereof, shall be taken by the exercise of the power of eminent domain for a period of time, definite or indefinite, whether or not for the entire unexpired portion of the term of this Lease or for a period greater than the same, this Lease shall, nevertheless, continue in full force and effect and the Tenant shall have the right (except as hereinafter provided) to receive the entire Award (which Award, in the case provided for by this Section 12.6, is called the "Use Award") which is allocable to that part of the unexpired portion of the term of this Lease to which the Use Award relates. The Tenant shall have no rights against the Landlord by reason of such taking, including, without limitation, any right to an abatement of rent or any other charges payable by the Tenant, or the performance of any obligation to be performed by the Tenant, and the rights and liabilities of the Landlord and the Tenant to each other shall be the same as if there had been no such taking. Notwithstanding, the Tenant and the Leasehold Mortgagee, in cooperation with the Landlord, shall have the right to participate in negotiations relative to any such taking or the Use Award in order to be certain that their respective interests thereunder are protected, with all cost and expense thereof to be a first charge against the Use Award.

The Use Award shall be paid, however, by the Tenant to

The Depository for application, as hereinafter set forth, after deduction therefrom of all cost and expense reasonably incurred incident to obtaining such Use Award.

The Use Award shall be held and disbursed as follows:

(a) If the same is payable in monthly or other periodic installments, such installments shall as received by the Depository be applied on account of, and to the extent of, the Tenant's obligations on account of annual rental and proportionate shares of other charges payable by the Tenant on account of such period; and the dollar value of obligations to be performed by the Tenant shall, on a proportionate basis, also be satisfied from such periodic installments.

Any balance of such periodic installments remaining shall be applied to or for the account of the Tenant, except that if such taking shall be for a period extending beyond the expiration of the term of this Lease, the Landlord (or such Institution) shall be entitled to the entire Use Award attributable to the period after such expiration;

(b) Where the Use Award is in a lump sum or payable in installments less frequently than quarterly, the lump sum or other installments, together with investment earnings thereon, if any, shall be divided by the number of months included in the period for

which such Award has been made and the quotient thereof shall be applied monthly, in accordance with subparagraph (a) above; and

(c) To the extent an Use Award is allocable to the cost of repairs and restoration following the termination of a temporary taking, the same shall be treated as Proceeds, within the meaning of Article 13, below, and applied consistent therewith.

ARTICLE 13

CONDITIONS GOVERNING REPAIR, RESTORATION, CHANGES AND ALTERATIONS

13.1 Whenever, under the provisions of Article 11 or Article 12 of this Lease, the Tenant shall be obligated to restore, rebuild, repair, or make alterations to the Property, the cost of which will exceed One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) (or, in and after the twenty-fifth Lease Year, the amount being equivalent in value at the time in question to \$150,000 in 1982, herein called the "value equivalent"), the amount of the Proceeds, or the amount of the Net Award (which amounts are hereinafter collectively referred to in this Article as the "Amounts"), as the case may be, shall be held and disbursed in accordance with the following provisions:

(a) Amounts on account of any casualty loss, Proceeding or Agreement (hereinafter collectively referred to as the "Event"), shall be delivered to the

Depository as soon as available and in all events prior to commencement of the work of repair and restoration (hereinafter referred to as the "Work");

(b) Tenant shall submit to Landlord, for the approval of Landlord, a schedule of the estimated cost of the Work to be performed in accordance with the plans and specifications approved by the Landlord pursuant to Section 13.2;

(c) Before the commencement of the Work, Tenant shall pay to the Depository a sum equal to the amount by which the estimated cost of the Work, as determined by Landlord on the basis of Tenant's estimate as approved by the Landlord, exceeds the Amounts theretofor delivered to the Depository under Section 13.1(a);

(d) During the progress of the Work, Tenant shall submit to Landlord and the Depository, at periodic intervals, but not more frequently than monthly, a certificate approved as to accuracy by Tenant's architect or engineer and by any consultant engaged by Landlord under subparagraph (f) of this Section 13.1, showing the cost of labor and materials incorporated into the Work, or suitably stored at the Leased Premises, during the period specified in the certificate and the amount properly due and owing to contractors and suppliers on account thereof, which period shall not include any part of the period covered by any other such certificate, and Depository upon receipt of such certificate

and approval(s) thereof shall pay to Tenant, from the deposit, if any, made with it by Tenant, and, upon the exhaustion thereof, from the Amounts, ninety percent (90%) of the lesser of such cost or amounts due and owing to contractors and suppliers on account thereof (disregarding any retainage which Tenant may have the right to withhold from amounts due and owing to contractors and suppliers, but which shall include, in making such computation, amounts due and owing to contractors and suppliers on account of work previously done and certified but, as to which, ninety percent (90%) payment thereof has not been made), as shown by such certificate. When required by Landlord and as a condition to any payment by Depository, evidence satisfactory to the Landlord shall be furnished to the effect that the Depository is holding sums so deposited and Amounts remaining undisbursed which are sufficient for the payment of all remaining costs of the Work. If such evidence shall indicate the Depository is not holding funds which are so sufficient, the Tenant shall forthwith deposit with the Depository the amount of the deficit, which it shall hold and disburse as above set forth.

(e) Upon completion of the Work, and delivery to Landlord and Depository of a certificate from Tenant that the Work has been completed and all bills for labor and materials incurred in connection therewith have been paid, supported by a surety company bond

or title evidence for which provision is hereinafter made, assuring such payment, together with a certificate from the Tenant's architect or engineer that the Work has been completed in accordance with the Final Working Drawings and Specifications (as amended, with Landlord's approval), the Depository shall, in the case of Amounts which are Proceeds of insurance, pay the balance in its possession to the Tenant, and, in the case of the Proceeds of any Proceeding or Agreement, apply the balance first to reimbursement to Tenant for any amounts required to be deposited by Tenant under (c) or (d) and then to the Landlord, and then to the Tenant and anyone claiming by, through or under the Tenant (including the Leasehold Mortgagee), those portions of any balance in Depository's possession to which the respective parties may be entitled pursuant to Section 12.4(a)(ii); and

(f) If Landlord determines that, prior to giving its approval to any plans and specifications or estimated schedule of costs, or before honoring certificates calling for payment from the funds to be deposited with Landlord, it is appropriate to retain, for itself, independent professional assistance of an architectural or engineering consultant, Landlord shall have the right so to do, and, if the Tenant shall not be proceeding as required hereunder with respect to prosecution of the Work, the reasonable fees and

expenses of such consultant for such services shall be paid by Tenant and shall be treated as a part of the cost of the Work in determining amounts required to be made available for such purposes.

13.2 Any restoration, rebuilding, repair, or alteration undertaken by Tenant pursuant to Article 11 or 12 of this Lease the cost of which will exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (or, in and after the twenty-fifth Lease Year, the value equivalent) or any construction requiring approval of the Landlord under Section 8.1 hereof shall produce Improvements conforming to the Final Working Drawings and Specifications identified in Exhibit "C" attached hereto, or in accordance with such amended working drawings and specifications as from time to time Tenant may propose and Landlord may approve. In the event that Tenant shall propose such amended working drawings and specifications, Tenant shall comply with the provisions of the Design Review Procedure attached hereto as Exhibit "D", and the provisions of Sections 7.2, 7.3(c) and 7.4 through 7.11, inclusive, of this Lease shall be applicable to such restoration, rebuilding, repair, or alteration.

13.3 Reconstruction, demolition, subtractions, additions, extensions or changes which Tenant proposes to make in accordance with the terms of Article 8 hereof, shall be subject to this Article, by which it is intended that such changes or alterations shall be treated as being attributable to an Event, within the meaning of Section 13.1 hereof, the

changes or alterations shall be treated as Work within the meaning of Section 13.1, and all requirements in Section 13.1, dealing with the conditions under which the Work may proceed, shall be applicable to such changes or alterations, except that no deposit need be made with the Depository if, in fact, the changes or alterations proposed do not arise from an Event of Default.

13.4 As to all Work governed by this Article (including Article 11 Work), the Tenant shall promptly commence and diligently complete the same within a reasonable time, subject only to delays occasioned by timing of receipts of Amounts, claims arising from an Event, acts of God, general unavailability of labor or materials, governmental restrictions or like causes beyond the reasonable control of the Tenant, but financial inability (except delays in pursuing claims for and receipts of Amounts) to proceed shall never be treated as a cause beyond the Tenant's control.

13.5 Whenever payments are made to or for the account of the Tenant under this Article, the Landlord and/or the Depository shall be entitled to require, concurrently therewith, assurance, by means of a surety company bond, title insurance or an opinion from a reputable attorney acceptable to Landlord that no claims on account of mechanics' or materialmen's liens may arise on account of work performed or materials supplied covered by the Tenant's certificate, on the basis of which the Depository makes such payment.

ARTICLE 14

WASTE

14.1 The Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Property, or permit or suffer any overloading of the floors of the Improvements thereof.

ARTICLE 15

INSPECTION OF PREMISES

15.1 The Tenant agrees to permit the Landlord, and its authorized representatives, to enter the Property at all times during usual business hours for the purpose of inspecting the same and, for the purpose of making any necessary repairs to the Property or performing any work therein that the Tenant has failed to make or perform and which Landlord may determine to be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or to prevent waste or deterioration in connection with the Property. The Landlord shall not be entitled to exercise rights hereunder other than inspection except after the expiration of any grace periods available to Tenant or except where Landlord shall determine that prompt attention is required to prevent injury to persons or property or to the Improvements, in which latter situation Landlord shall give to Tenant such notice, if any, as may be appropriate in the circumstances.

Nothing herein shall imply any duty upon the part of the Landlord to do any such work which, under any provision

of this Lease, the Tenant may be required to perform, and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default in failing to perform the same.

The Landlord may, during the progress of any work performed by it on the Leased Premises, keep and store upon the Leased Premises, in a manner that will not interfere substantially with the rights of any subtenant, all necessary materials, tools and equipment. The Landlord shall not, in any event, be liable for inconvenience, annoyance, disturbance, loss of business, or other direct or consequential damage to the Tenant by reason of making repairs or the performance of any work on the Leased Premises, or on account of bringing materials, supplies and equipment onto or through the Leased Premises during the course thereof, and the obligations of the Tenant under this Lease shall not thereby be affected in any manner whatsoever.

15.2 The Landlord is hereby given the right during usual business hours to enter the Property during the terms for the purpose of showing the same to prospective purchasers, mortgagees or others, where the reasonable business purposes of the Landlord make such display appropriate, and during the final twelve (12) months of the term of this Lease, to exhibit the same to prospective tenants. Where, under any provision of this Article 15, access is sought by Landlord to areas not normally accessible to the public, Landlord shall give Tenant forty-eight (48) hours' prior

notice before entering the Property and Tenant shall make such areas available for entry by Landlord.

ARTICLE 16

PAYMENTS TO PUBLIC UTILITIES

16.1 Tenant shall pay or cause to be paid when due all use and consumption charges and service fees and the like for all public utilities used upon or furnished to the Property during the term hereof, including, without limitation, charges for water, gas, electricity and telephone service.

16.2 In addition to paying for all utility use and consumption charges and service fees as hereinabove required, the Tenant shall also, at its sole cost and expense, procure any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of poles, wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any utilities servicing the Property.

ARTICLE 17

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 The Tenant covenants and agrees that, if it shall at any time fail to make required payments of principal and interest under any Leasehold Mortgage permitted pursuant to the provisions hereof, or fail to pay any Imposition pursuant to the provisions of Article 4 hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 10 hereof, or shall fail to make any

other payment, perform any other act or comply with any other covenant on its part to be made, performed or complied with as in this Lease provided, and in any such case such failure shall have continued beyond any grace, permitted delay or notice period herein or in any such Leasehold Mortgage provided for the payment or performance thereof, the Landlord shall have the right, without any obligation so to do, without waiving Landlord's other rights or remedies hereunder and without notice to or demand upon the Tenant in an emergency, or otherwise after ten (10) days' notice, and without waiving, or releasing the Tenant from, any obligations of the Tenant in this Lease contained, pay any such mortgage payment, pay any Imposition, effect any such insurance coverage and pay premiums therefor, and may make any other payment, perform any other act or comply with any other covenant on the part of the Tenant to be made, performed and complied with, as in this Lease provided, in such manner and to such extent as the Landlord may deem desirable, and, in exercising any such rights, pay necessary and incidental reasonable costs and expenses, and employ counsel and incur and pay their reasonable fees and expenses.

17.2 Tenant shall on demand reimburse Landlord for all amounts expended by or on behalf of Landlord under Section 17.1 and the same shall be treated as additional rent hereunder. Interest thereon at the rate hereinafter set forth shall be paid thereon from the date Landlord shall make any such expenditure.

ARTICLE 18

LANDLORD'S REMEDIES AND BREACH

18.1 Upon an "Event of Default" (as defined herein) Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease, to which Landlord may resort cumulatively, or in the alternative and in any order:

(a) Landlord may, at Landlord's election, keep this Lease in effect and enforce all of its rights and remedies under this Lease, including the right to recover the rent and other sums as they become due by appropriate legal action.

(b) Landlord may, at Landlord's election, terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, in accordance with the terms of this Lease, all of Tenant's right in the Property shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Property in broom clean condition, and Landlord may re-enter and take possession of the Property and eject Tenant or any Occupancy Tenant, or any other person or persons claiming any right under or through Tenant or eject some and not others or eject none; provided, however, that Landlord shall not eject any Occupancy Tenants who Landlord is required to recognize pursuant to

Section 20.1 hereof. This Lease may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not relieve Tenant from the payment of any sums then due to Landlord or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions taken by Landlord, after the occurrence of an Event of Default, in the absence of a written election by Landlord to terminate this Lease, constitute a termination of this Lease:

(i) Appointment of a receiver in order to protect Landlord's interest hereunder;

(ii) Consent to any subletting of the Property or assignment of this Lease by Tenant, whether pursuant to the provisions hereof with relation to assignment or subletting, or otherwise;

(iii) Any other action by Landlord or Landlord's agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, action to maintain and preserve the Property or any action taken to relet the Property, or any portions thereof, for the account of Tenant and in the name of Tenant.

(c) Landlord may at Landlord's election re-enter and take possession of the Property, and without terminating this Lease, and at any time from time to time, relet the Property or any part or parts of it for the account and in

the names of Tenant or otherwise. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease all sums required of Tenant under this Lease, plus Landlord's expenses, less the proceeds of any such reletting. No act by or on behalf of Landlord, including those described in subparagraphs (b)(i), (ii) and (iii) above, under this provision shall constitute a termination of Tenant's right to possession under this Lease unless Landlord gives Tenant written notice of termination.

(d) In the event Landlord terminates this Lease, Landlord shall be entitled at Landlord's election to damages in the following sums:

(i) The worth at the time of award of the unpaid rent which has been earned at the time of termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the fair market rental value reasonably achievable for such period; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the fair market rental value reasonably achievable for such period; and

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom including without limitation, the following: (v) expenses for cleaning, repairing or restoring the Property; (w) expenses for altering, remodeling or otherwise improving the Property for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to Tenant, or otherwise); (x) broker's fees, advertising costs of carrying the Property such as taxes and insurance premiums thereon, utilities and security precautions; (y) expenses in retaking possession of the Property; and (z) attorneys' fees and court costs.

(v) The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate hereinafter set forth. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Boston at the time of the award.

(vi) For purposes hereof, there shall be treated as Percentage Rent for any period after any default

an amount at an annual rate equal to the average annual Percentage Rent which the Tenant was obligated to pay to the Landlord under this Lease either: (y) from the commencement of the term hereof to the date of such default, or (z) during the last three (3) Lease Years prior to the date of such default--whichever is the greater.

18.2 A breach of this Lease shall exist if any of the following events (severally "Event of Default" and collectively "Events of Default") shall occur:

(a) Tenant shall have failed to pay the Base Rent or the Percentage Rent when and as the same shall be due and payable and such failure shall continue for a period of ten (10) days after written notice from Landlord.

(b) Tenant shall have failed to pay any other charge, additional rent, Imposition or any obligation of Tenant requiring the payment of money under the terms of this Lease (other than the payment of Base Rent or Percentage Rent) for thirty (30) days after written notice from Landlord; or

(c) Tenant shall have failed to perform any term, covenant, or condition of this Lease, to be performed by Tenant, except those requiring the payment of money, and Tenant shall have failed to cure the same within thirty (30) days after written notice from Landlord, except that, where such failure could not reasonably be cured within said thirty (30) day period, Tenant shall not be in default, and no Event of Default shall exist, unless Tenant has failed to

promptly commence and thereafter be continuing to make diligent and reasonable efforts to cure such failure as soon as practicable; or

(d) Tenant shall have made a general assignment of its assets for the benefit of its creditors; or

(e) Tenant shall have abandoned the Leased Premises; or

(f) (i) A court shall have made or entered any decree or order adjudging Tenant to be bankrupt or insolvent; (ii) a petition seeking reorganization of Tenant or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State . thereof is filed against Tenant and not dismissed within sixty (60) days thereafter; (iii) a receiver, trustee or assignee of Tenant in bankruptcy or insolvency or for its property is appointed and not discharged within sixty (60) days thereafter; (iv) a court shall have made or entered any decree directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or (v) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order; or

(g) The sequestration or attachment of or execution or other levy on Tenant's interest in this Lease or the Leased Premises or any Improvements located thereon shall have occurred and Tenant shall have failed to obtain a return or release of such property within sixty (60) days thereafter,

or prior to sale pursuant to such levy, whichever first occurs;

(h) Tenant shall have admitted in writing its inability to meet its debts as they mature.

ARTICLE 19

ASSIGNMENT

19.1 This Lease is being entered into as a means of permitting and encouraging the development of the Leased Premises in accordance with the terms hereof and not for speculation in landholding. Tenant acknowledges that, in view of:

(a) the importance of the undertakings set forth herein to the general welfare of the community;

(b) the substantial financing and other public aids that have been and/or will be made available by law, the federal government and the City for the purpose of making such undertakings possible;

(c) the importance of the identity of the parties in control of the Tenant and the Property; and

(d) the fact that a transfer of all or part of the legal or beneficial ownership in the Tenant, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such ownership is for practical purposes a transfer or disposition of the interest in the Property then owned by Tenant;

the qualifications and identity of Tenant are of particular

concern to the community and the Landlord. Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease, and, in so doing, is further willing to accept and rely on the obligations of Tenant for the faithful performance of all undertakings and covenants hereby to be performed by it.

19.2 For the reasons set forth in Section 19.1 hereof and except as otherwise provided herein in Article 20 hereof and in Article 23 hereof, it is hereby agreed that, commencing on the Lease Commencement Date and continuing until the fifth (5th) anniversary of the issuance by the Landlord of the Certificate of Completion with respect to the Improvements:

(a) No transfer (by assignment or otherwise) of all or any part of Tenant's rights under this Lease or of the Tenant's interest in the leasehold estate created hereby or the Property shall be made or suffered.

(b) No transfer or change of legal or beneficial interests in Tenant (or any successor entity to the Tenant permitted hereunder) and no transfer of any partnership interests in the Tenant by sale, pledge or otherwise, shall be made or suffered.

The Prohibitions expressed in (a) and (b) above against transfer of Tenant's interest under this Lease and against transfer of a legal or beneficial interest in Tenant shall not apply to the following:

- (i) a transfer by reason of death of an individual;
- (ii) the granting of a Leasehold Mortgage, or to a transfer by the holder of a Leasehold Mortgage or by any party holding in good faith by, through or under a Leasehold Mortgage;
- (iii) transfers in the aggregate not exceeding ten percent (10%) of the interests in Tenant (legal or beneficial) or in any entity having an interest in Tenant; or
- (iv) transfers by James Sullivan of any interests owned by him to his wife, children or trusts for the benefit of his wife or children, but only if such transfers do not in the aggregate result in the transfer of a controlling interest in Tenant.

of the Certificate of Completion there may be made a transfer otherwise prohibited prior to such time, but only with the prior written consent of the Landlord. Landlord agrees not unreasonably to withhold such consent, taking into consideration the reputation, experience in management of real estate and financial capacity of any proposed transferee to perform the obligations of Tenant hereunder. Where Landlord has given such consent to Tenant to effect any proposed transfer, such transfer shall be effective (in the case of a transfer of the leasehold interest hereunder) only if the Improvements are transferred concurrently therewith (as hereinafter set

forth) and (in all cases) only upon compliance with the following conditions:

(a) At the time of such transfer, there shall not exist hereunder any Event of Default or any event which would become an Event of Default with notice and the passage of time therefrom;

(b) The Tenant shall have furnished or caused to be furnished to Landlord assurances reasonably satisfactory to Landlord that the transferee is not insolvent and will not be rendered insolvent by assumption of the obligations of the Tenant under this Lease.

For the purposes of this provision, insolvency shall mean and include inability to meet the obligations of the transferee as and when the same become due and payable; and

(c) In the case of a transfer of the leasehold interest hereunder, such transferee shall assume, by written instrument reasonably satisfactory to the Landlord, directly with the Landlord, the obligations on the part of the Tenant to be performed and observed under this Lease.

No transfer of the Tenant's interest under this Lease shall be effective unless accomplished by suitable written instrument recorded in the office in which, by law, records relating to real estate in Boston, Massachusetts, are required to be filed to be effective against bona fide purchasers for value of such property, and a true and correct copy thereof, certified as such by the transferor and the transferee, shall have been sent to the Landlord in the same

fashion in which notices are required to be given under the terms of this Lease.

19.4. For the purposes of this Article 19:

(a) The Tenant agrees that the ownership of this Lease and all of the Tenant's rights, title and interest in and to the Improvements shall be non-separable, and that an attempt to transfer any of the Tenant's right, title or interest in the Improvements shall be null and void and a breach of this Lease, unless accompanied by a transfer and assignment of the Tenant's estate under this Lease.

(b) References herein to transfer of the Tenant's interest in this Lease or the Tenant's estate mean a sale, assignment or other disposition of the entire interest of the Tenant in the Property. Partial transfers shall not be permitted, except for subleases, to which reference is specifically hereinafter made in Article 20.

A sublease of all or substantially all the Property for any material part of the term of this Lease (which shall in any event mean a period which is five (5) years or more in duration) shall, for the purposes of this Article 19, be a transfer.

(c) Any transfer which is not permitted hereby and which is made without Landlord's consent shall be void and of no force or effect.

ARTICLE 20

SUBLETTING

20.1 Subject to the use restrictions contained in this

Lease, and subject to this Section and the other terms and conditions of this Lease, Tenant may sublet any part of the Property at any time and from time to time to such Occupancy Tenants upon such terms and conditions as Tenant shall deem fit and proper, provided, that, before subletting any part or all of the Property at ground level or on the second floor Tenant shall, from time to time, submit in writing to Landlord for Landlord's approval, which approval shall not be unreasonably withheld, a program for the leasing of the space on the first and second floors for retail purposes setting forth in reasonable detail the nature of particular retail uses and the general area in the Improvements which each such use shall occupy (the "Leasing Program"). Landlord shall within ten (10) days of each such submission of a Leasing Program notify Tenant in writing of its approval or disapproval thereof. If no notice of disapproval is given to Tenant within ten (10) days after Landlord's receipt of any such submission, the proposed Leasing Program shall be deemed approved. Tenant shall have absolute authority to sublet any retail space to any occupant upon any terms Tenant may deem appropriate provided only that each such sublease be in conformity with the Leasing Program then in effect.

20.2 Landlord hereby agrees, for the benefit of any Occupancy Tenant under any sublease for use or occupancy of space in or on the Improvements or the Property which meet the requirements of this Article 20 and which meet the

following criteria, that, upon termination of this Lease, it will recognize and give effect to all such subleases then in effect which (a) have priority over any Leasehold Mortgage or as to which the holders of any Leasehold Mortgage have entered into an agreement to recognize and give effect to such sublease in the event of a foreclosure of any Leasehold Mortgage and (b) are so-called "net" leases containing requirements for the payment by such Occupancy Tenant of rental in monthly installments and additional rental for increases in real estate taxes and operating expenses as may have been (at the time of execution of such sublease) customary in leases of first class office building space in the City of Boston. Landlord shall enter into recordable instruments with any such Occupancy Tenants, as requested by the Tenant, embodying the provisions of this Section 20.2 provided that any such instrument requires, as a condition of the Landlord's obligation, that such Occupancy Tenant shall attorn to Landlord simultaneously with such termination, (i.e., each such Occupancy Tenant shall agree directly with the Landlord, by written instrument reasonably satisfactory to the Landlord, that it will perform all its obligations as subtenant under such sublease for the benefit of Landlord, as if Landlord were the sub-landlord named in the sublease.)

The Tenant covenants and agrees that in the event of the cancellation or termination of this Lease prior to the expiration of the term hereof, unless Landlord shall have previously agreed in writing to recognize any such leases or

subleases following the expiration or sooner termination of this Lease, Landlord shall have the option to terminate or cancel each such lease or sublease; provided, with regard to (i) leases or subleases which Landlord shall have agreed in writing to so recognize and (ii) leases or subleases which Landlord does not elect to so cancel or terminate, the Occupancy Tenant under each such lease or sublease shall make full and complete attornment to Landlord for the balance of the term of such lease or sublease with the same force and effect as though said lease or sublease were originally made directly from the Landlord to the Occupancy Tenant.

20.3 Each sublease entered into by the Tenant, shall contain provisions substantially similar to the following provisions, unless Landlord shall otherwise specifically agree:

"If, at any time during the term of this lease, the landlord of the demised premises shall be the holder of a leasehold estate covering premises which include the demised premises, and if such leasehold estate shall terminate or be terminated for any reason, the lessee agrees, at the election and upon demand of any owner of the premises which include the demised premises, to attorn, from time to time, to any such owner, upon the terms and conditions set forth herein, for the remainder of the term demised by this lease. The foregoing provisions shall inure to the benefit of any such owner, shall apply to the tenancy of the lessee hereunder, and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions. The lessee hereunder, however, upon demand of any such owner, agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to such owner, in which the lessee shall acknowledge such attornment and shall set forth the terms and conditions

of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the term originally demised in this lease. However, until such owner shall require such attornment, or shall advise the lessee that such owner terminated lessee's possession of the premises demised under its lease, the lessee shall pay to such owner, from and after the time of such termination, the rent and all other charges payable by the lessee and shall perform, for the benefit of such owner, all obligations of the lessee to be performed under its lease. Nothing contained in this paragraph shall be construed to impair any right, privilege or option of any such owner."

20.4 Notwithstanding the foregoing, no subletting shall be made to any Occupancy Tenant if the terms thereof would be inconsistent with Tenant's leasing program, a copy of which is attached hereto and made a part hereof as Exhibit "LP". Such leasing program shall not be modified without Landlord's prior written approval.

ARTICLE 21

LANDLORD'S SECURITY INTEREST; COVENANT AGAINST ENCUMBRANCES; ASSIGNMENT OF SUBLEASES

21.1 Further to secure the performance of all the obligations of the Tenant under this Lease, the Tenant hereby grants, bargains, sells and mortgages to the Landlord all right, title and interest of the Tenant in and to all equipment, goods, chattels and personal property located upon the Property and owned by the Tenant, and agrees to execute such financing statements as may be required by the Uniform Commercial Code as enacted and in force in the Commonwealth of Massachusetts, from time to time, to perfect the security interest intended to be created hereby. The

Tenant hereby assigns to the Landlord all the rents, issues, profits and income under all present and future leases or subleases of all or any portion of the Property to secure the payment of the rents and all other charges payable by the Tenant under this Lease, as well as to secure the performance of all the covenants and provisions of the Tenant under this Lease, the non-occurrence of conditions under this Lease which confer upon the Landlord the right to terminate the same, or cause the termination of the same; and the Landlord shall be entitled, as a matter of right, to have a receiver appointed to take possession of the Property with power to collect the rents, issues, profits and income of the Property and relet the same under order of court or otherwise.

The Landlord agrees that, until a default shall occur hereunder, as to which notice has been given and the time within which to cure has elapsed, the Tenant may, subject to the rights and obligations of any Leasehold Mortgagee set out under Article 23 hereof (and whether such rights exist under its Leasehold Mortgage or documents given to it as supplemental security for its loan) collect, receive and enjoy the rents, issues, profits and income of the Leased Premises, but the rents shall not be collected more than one month in advance of the due date thereof.

21.2 The Tenant shall have no right or power to, and the Tenant shall not, in any way, encumber the fee simple title of the Landlord in and to the Leased Premises or the interest of the Landlord in the Improvements and the Building Service Equipment, nor shall such fee simple estate or other interest of the Landlord be in any way subject to any claim against the Tenant by way of lien, or otherwise, whether arising by operation of law, by express or implied contract or in any other manner, and any such encumbrance or claim by way of lien or otherwise upon the Leased Premises or the Improvements, whether arising by operation of law, by any act or omission of the Tenant or in any other manner, shall accrue only against the leasehold estate of the Tenant and the interest of the Tenant in the Improvements and the Building Service Equipment.

If any such encumbrance or claim by way of lien or otherwise shall exist or be asserted against the fee simple title of the Landlord in and to the Leased Premises or against the interest of the Landlord in the Improvements and the Building Service Equipment, then, in addition to any other right or remedy which the Landlord may have under this Lease or at law or in equity, the Landlord shall have the right, without any obligation so to do, to discharge or pay the same, including the payment of penalties, interest and costs claimed to be due, provided Tenant shall first have been notified of Landlord's intent to take such action and

Tenant shall have failed to pay or cause to be discharged such encumbrance or lien within thirty (30) days thereafter. All amounts paid and all costs and expenses incurred by the Landlord (including reasonable attorneys' fees) pursuant to the provisions of this Section, together with interest thereon from the date of any payment or expenditure by Landlord at the annual rate hereinafter set forth, shall constitute additional rent hereunder and shall be payable to the Landlord on demand.

21.3 The Tenant hereby assigns to the Landlord all existing subleases affecting the Leased Premises and the Property, or any part hereof, and shall and does hereby assign any future subleases to the Landlord upon execution thereof, as further security for the payment of the rent reserved hereunder and for the performance of the covenants and provisions in this Lease contained. Such assignment of future subleases to the Landlord shall be in form satisfactory to the Landlord, and this assignment and any future assignments shall permit the Tenant to continue to collect the rent falling due under such subleases, but not more than one month in advance, so long as there shall be no default under this Lease as to which notice has been given.

The Tenant covenants and agrees under this assignment and under any future assignment that it will not modify any such subleases, so as to reduce the rent, shorten the term or otherwise reduce to any material extent the obligations of any Occupancy Tenant under its sublease, provided that

the foregoing shall in no way limit or restrict Tenant's ability to exercise any rights or remedies (including termination) in the event of default by an Occupancy Tenant under its sublease. The Tenant agrees to execute such instruments in confirmation of this assignment, containing such terms and provisions as the Landlord may reasonably require, consistent with the provisions of this Section 21.3.

21.4 The Tenant covenants and agrees to keep, perform and observe all the terms, covenants, provisions and conditions required to be performed and observed by the Tenant as landlord or sub-landlord under each sublease now or hereafter made, to the end that all things shall be done which are necessary to keep unimpaired the Tenant's rights as landlord or sub-landlord under each lease or sublease, and diligently to pursue the remedies legally available to the Tenant as landlord or sub-landlord to require each Occupancy Tenant to keep, perform and observe all of the covenants, provisions and conditions contained in such sublease on the part of such lessee or sublessee to be kept, performed and observed. In the event that the Tenant shall neglect, refuse or fail so to do, the Landlord shall, after fifteen (15) days prior notice to Tenant of Landlord's intent to do so, have the right, without limiting other remedies available to Landlord, to perform and comply with such sublease covenants, agreements and provisions, or may, in the name of the Tenant, pursue all remedies available to the Tenant as landlord or sub-landlord to enforce compliance

by said lessee or sublessee with said sublease covenants, agreements and provisions, and any and all sums expended by the Landlord in performance and compliance therewith, or in the enforcement of such performance or compliance, including costs, expenses and attorneys' fees, shall bear interest from the date of any such expenditures at the annual rate hereinafter set forth until repaid, and shall be paid by the Tenant to the Landlord upon demand and shall constitute additional rent hereunder.

21.5 The assignment by the Tenant of the Tenant's interest in any sublease, or the rents payable thereunder, shall not constitute an assumption by the Landlord of any obligations of the landlord or sub-landlord thereunder, unless and until the Landlord shall specifically otherwise elect; and all subleases executed by the Tenant shall so provide, unless the Landlord shall otherwise consent in writing.

ARTICLE 22

TITLE TO IMPROVEMENTS; SURRENDER OF THE PROPERTY

22.1 Landlord and Tenant acknowledge and agree that title to the Improvements and the Building Service Equipment is, shall be and shall remain in the Tenant until the termination of this Lease, however the same occurs. However, Tenant agrees that its interest in the Improvements and the Building Service Equipment shall become subject to the terms

and conditions of this Lease and that any grantees or assignees of its interest in the Improvements, the Building Service Equipment or this Lease shall take subject to and be bound by the terms and conditions of this Lease, expressly including the following provisions:

(a) Upon the expiration or earlier termination of this Lease, however the same occurs, title to the Improvements and the Building Service Equipment shall automatically vest in the Landlord and the Landlord shall be the sole and absolute owner thereof, free of any right, title, interest or estate of the Tenant therein, without the execution of any further instrument and without payment of any money or other consideration therefor, except, only, that in the event of the termination of this Lease under circumstances allowing the Leasehold Mortgagee to obtain a new lease under the provisions of Section 23.3(h) and if, at that time, the Leasehold Mortgagee shall exercise its rights under said Section 23.3(h), then the Tenant's interest in the Improvements and the Building Service Equipment, to the extent then existing, shall automatically pass to, vest in and belong to the Leasehold Mortgagee, or any permitted successor to the Leasehold Mortgagee, until the termination of such new lease, however the same occurs. The Tenant shall execute such further assurances of title as may be requisite. The Tenant hereby grants, releases, transfers, sets over, assigns and conveys to the Landlord all of its right, title and interest in and to the Improvements and the Building Service

Equipment upon the termination of this Lease. Nothing herein contained shall adversely affect Tenant's title to the Improvements and the Building Service Equipment and any right that the Tenant may have to quiet enjoyment and possession so long as this Lease shall continue in force and effect and the Tenant shall not be in default hereunder. Further, until the termination of this Lease, Tenant alone may claim depreciation of the Improvements and Building Service Equipment for all taxation purposes to the extent that it may legally be entitled to make such claim.

(b) The Tenant shall, upon such termination, well and truly surrender and deliver the Leased Premises and deliver the Improvements and the Building Service Equipment, excepting any subtenants' movable trade fixtures, machinery, equipment and personal property (without any payment or allowance whatever to the Tenant on account of, or for, the Improvements and the Building Service Equipment or any part thereof) to the possession and use of the Landlord, without fraud or delay and in the same order and condition originally constructed, as from time to time altered not in violation of this Lease, ordinary wear and tear only excepted.

(c) The Tenant covenants and agrees that, without the prior written consent of the Landlord, it will not execute and deliver or renew any sublease to a subtenant which would extend beyond the then term of this Lease (and, for the purposes of this provision, any rights of extension in any sublease shall be treated as having been exercised by the

subtenant), it being the intention of the parties that, except as the Landlord may otherwise agree, the Landlord, at the termination of this Lease, shall be the sole owner of the Property, not subject to any lease, or subtenants' rights of any kind.

(d) The Landlord, upon termination of this Lease for any reason, may, without notice (any notice to quit or intention to re-enter required by law being expressly waived by the Tenant), re-enter upon the Property and possess itself thereof by summary proceedings, ejectment or otherwise, and may dispossess the Tenant and remove the Tenant and all other persons and property from the Property which it may elect so to dispossess, to the extent that it has not theretofore otherwise agreed, and may enjoy the Property and have the right to receive all rents and other income from the same, without hindrance or interference from the Tenant or anyone claiming by, through or under the Tenant. Any personal property of the Tenant remaining on the Property beyond thirty (30) days after termination of this Lease shall be treated as having been abandoned by it and be retained by the Landlord as its sole property or be disposed of, without liability or accountability, as the Landlord sees fit.

22.2 Tenant shall execute such documentation as Landlord may require to transfer or confirm transfer title to the Improvements and Building Service Equipment to Landlord, as hereinabove set forth.

22.3 If any rule of law shall forbid or frustrate the vesting in Landlord of the title to the Improvements and the Building Service Equipment in accordance with the provisions of this Article, then such vesting of title shall occur not later than twenty-one (21) years after the death of the last survivor of _____.

In the event such vesting shall occur due to the provisions of this paragraph and prior to the expiration or other termination of this Lease, this Lease shall continue in full force and effect.

ARTICLE 23

LEASEHOLD MORTGAGES

23.1 Notwithstanding any other provisions of this Lease, the Tenant shall at all times and from time to time have the right to encumber, pledge, or convey all, but not less than all, of its leasehold estate in the Leased Premises, its title to and interest in the Improvements and its title to and interest in the Building Service Equipment by way of a bona fide Leasehold Mortgage (and, where appropriate, by grant of a security interest under the Uniform Commercial Code) to secure the payment of any loan or loans obtained by Tenant to finance only the Improvements and the Building Service Equipment or to refinance any outstanding loan or loans therefor obtained by Tenant for the same purpose; provided, however, that Tenant shall give prior written notice to Landlord of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es)

of such Leasehold Mortgagee and any other information regarding Leasehold Mortgage and mortgage documents which Landlord may require.

23.2 (a) If a Leasehold Mortgagee, through the operation of its contract to finance the Improvements and the Building Service Equipment, or by foreclosure, acquires Tenant's entire interests in the Property prior to the completion of the Improvements and the Building Service Equipment, and the Leasehold Mortgagee has complied with the provisions of Section 23.3(a) hereof, the Leasehold Mortgagee shall have the following options:

(i) complete construction of the Improvements in accordance with the approved Final Working Drawings and Specifications and this Lease, and in all respects comply with the provisions of this Lease, or

(ii) with the prior written consent of Landlord, sell, assign, or transfer, Tenant's entire interests in the Property to a purchaser, assignee or transferee acceptable to Landlord who shall expressly assume all of the covenants, agreements and obligations of the Tenant under this Lease in respect of the Property by written instrument satisfactory to the Landlord and recorded forthwith in the Suffolk County Registry of Deeds, or

(iii) reconvey the entire interests of Tenant in the Property to the Landlord.

(b) To obtain the benefit of one of the options under paragraph 23.2(a), the Leasehold Mortgagee must notify Landlord of the option it elects within sixty (60) days after it shall acquire title to or possession of the Property (whichever shall first occur). In the event that a Leasehold Mortgagee elects to complete construction pursuant to subparagraph (a)(i) above, or sells, assigns, or transfers pursuant to subparagraph (a)(ii) above, the Landlord shall extend the time limits set forth in this Lease only as shall be reasonably necessary to complete the Improvements and the Building Service Equipment, and upon such completion, the Leasehold Mortgagee or purchaser of the leasehold estate, as the case may be, shall be entitled to the same rights, benefits and privileges available to Tenant hereunder, including Tenant's right to a Certificate of Completion pursuant to Section 7.12.

23.3. If a Leasehold Mortgagee shall, by written notice to the Landlord given within thirty (30) days of the execution, delivery and recording of a Leasehold Mortgage, notify Landlord thereof and of the name and address of the Leasehold Mortgagee for notice purposes, and of the recording reference of its Leasehold Mortgage, and with such notice shall furnish to the Landlord a true copy of its Leasehold Mortgage, Landlord agrees that so long as such Leasehold Mortgage shall remain unsatisfied of record, or until written notice of satisfaction thereof is given by the Leasehold Mortgagee to Landlord (whichever shall first occur) the following provisions shall apply:

(a) Landlord shall, promptly upon receipt of a communication purporting to constitute the notice provided for in the foregoing provisions of this Section 23.3, either provide the Leasehold Mortgagee submitting such communication with a written confirmation of the receipt of such communication and that the same constitutes the notice provided for in the foregoing provisions of this Section 23.3, or notify the Tenant in writing and such Leasehold Mortgagee of the rejection of such communication as not conforming with the foregoing provisions of this Section 23.3 and specifying the basis for such rejection. Each Leasehold Mortgagee which notifies Landlord in conformity with the foregoing provisions of this Section 23.3 is referred to in the following provisions of this Section 23.3 as a "Qualifying Leasehold Mortgagee";

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address for notice purposes of a Qualifying Leasehold Mortgagee or of an assignee of any such Leasehold Mortgagee, notice of the new name and address for notice purposes shall be provided to Landlord as a condition to the continued availability of the rights hereunder of a Qualifying Leasehold Mortgagee;

(c) There shall be no cancellation, surrender, termination or modification of this Lease by joint action of Landlord and Tenant, or termination of this Lease by unilateral action of Tenant under the provisions of this Lease permitting such termination by Tenant, without in each case first securing the prior written consent of each Qualifying Leasehold Mortgagee;

(d) The Landlord shall, upon giving to Tenant any notice of default, simultaneously give a copy of such notice to each Qualifying Leasehold Mortgagee, and no notice of default given to Tenant shall be effective until a copy thereof has been given to each Qualifying Leasehold Mortgagee. Wherever in this Lease notice is to be given to a Qualifying Leasehold Mortgagee, a notice addressed to such Qualifying Leasehold Mortgagee at its address specified in accordance with the foregoing provisions of this Section 23.3 and otherwise complying with the terms of the notice provisions of this Lease shall conclusively be treated as having been "given" within the meaning of the respective provisions calling for notice to a Qualifying Leasehold Mortgagee;

(e) Each Qualifying Leasehold Mortgagee shall have the same period, after such notice has been given to it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus (x) in the case of a default in the payment of the Base Rent or the Percentage Rent,

an additional period of ten (10) days, and (y) in the case of any other default, an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is prosecuted with diligence, and Landlord shall accept such performance by a Qualifying Leasehold Mortgagee as if performed by Tenant;

(f) Upon the happening of any of the Events of Default set forth in subsections (d), (e), (f), (g) or (h) of Section 18.2 of this Lease, the Landlord shall give notice thereof to each of the Qualifying Leasehold Mortgagees promptly after Landlord shall have knowledge of the happening of such event;

(g) In the case of any default by Tenant which is not susceptible of being cured by any Qualifying Leasehold Mortgagee, Landlord agrees that it will take no action to effect a termination of this Lease by reason of such default without first giving to each Qualifying Leasehold Mortgagee a reasonable period of time after notice under either (d) or (f) above to obtain possession of the Leased Premises and to cure such default, in the case of a default which can be cured upon the obtaining of possession, or to institute

foreclosure proceedings and to complete such foreclosure or otherwise to acquire the interest of Tenant under this Lease with diligence and without delay, in the case of a default which cannot be cured by any Qualifying Leasehold Mortgagee; provided, however, (i) that the period for obtaining possession or acquiring the interests of Tenant by foreclosure or otherwise, as the case may be, shall be extended for the period during which such action is enjoined or stayed, (ii) that such Qualifying Leasehold Mortgagee shall pay or cause to be paid the Base Rent, Percentage Rent and other monetary obligations of Tenant under this Lease as the same become due, and to continue good faith efforts to perform all of Tenant's other obligations under this Lease which are susceptible of being performed by such Qualifying Leasehold Mortgagee, during the period of such forbearance, and (iii) that nothing herein shall require any Qualifying Leasehold Mortgagee to begin or continue such possession or foreclosure proceedings or preclude Landlord from exercising (subject to the provisions of this Article 23) any rights or remedies under this Lease with respect to any other defaults by Tenant during the period of such forbearance;

(h) In the event of a termination of this Lease for any reason, other than by expiration of the term, the Qualifying Leasehold Mortgagee holding the senior

Leasehold Mortgage shall have the right, in addition to the foregoing rights, to elect to demand a new lease of the Leased Premises, exercisable by notice in writing to the Landlord within sixty (60) days after the giving of notice by Landlord to each Qualifying Leasehold Mortgagee of such termination, for the balance of the term hereof effective as of the date of such termination, at the Base Rent, Percentage Rent and additional rent and upon all of the other terms, provisions, covenant and agreements set forth in this Lease except that Landlord shall not be required to warrant and defend the right of possession of the tenant under such new lease against the Tenant herein or anyone claiming by, through or under the Tenant; provided, that, concurrently with the delivery of such notice, the Leasehold Mortgage shall have been performed and thereafter shall continue to perform all obligations of Tenant hereunder capable of being performed by such Qualifying Leasehold Mortgagee which would have accrued hereunder had this Lease remained in force until the time of such delivery. The parties shall act promptly after such notice and performance to execute such new lease. Any such new lease shall be superior and not subordinate to any mortgage upon Landlord's fee interest in the Leased Premises hereafter given; and any such new lease may, at the option of such Qualifying Leasehold Mortgagee, name as tenant a nominee of such Qualifying Leasehold

Mortgagee. If as a result of any such termination the Landlord shall succeed to the interests of Tenant under any sublease of the Leased Premises or any portion thereof, Landlord shall execute and deliver an assignment of all such interests to the tenant under the new lease simultaneously with the delivery of such new lease;

(i) The Leasehold Mortgagee shall be given notice of any arbitration or appraisal proceedings under the provisions of this Lease, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention.

23.4 The term "Leasehold Mortgage", as used in this Article, means one or more Leasehold Mortgages to an Institution which constitute from time to time a first or second lien on Tenant's entire interest in the Property, but in no event shall the aggregate original principal amounts thereof exceed, or be subsequently increased to exceed without Landlord's prior written consent, Total Project Costs. Except as set forth in the preceding sentence, the terms of any Leasehold Mortgage may be as the Tenant may negotiate with any Leasehold Mortgagee. The rights in this Article 23 provided may be exercised only by such Institution as is a lienholder in such first or second position which becomes a Qualifying Leasehold Mortgagee and not by any other subordinate Leasehold Mortgagees, all such other subordinate Leasehold Mortgages being hereby expressly prohibited. A deed of

trust or other form of security deed shall be treated as the equivalent of a mortgage.

23.5 Notwithstanding anything else herein contained to the contrary, if the holder (who is also a Qualifying Leasehold Mortgagee) of any Leasehold Mortgage expressly permitted hereby and constituting a First Lien on Tenant's leasehold estate shall in good faith and without intent to deprive Landlord of its benefits hereunder foreclose such Leasehold Mortgage and acquire such leasehold estate or in good faith accept a transfer of the Property from Tenant in lieu of foreclosure, or in good faith acquire such leasehold estate pursuant to the provisions of Section 23.3(h), the obligation of the Tenant to pay Percentage Rent shall thereafter cease and be of no further force and effect.

ARTICLE 24

HOLDING OVER; TITLE TO IMPROVEMENTS; SURRENDER

24.1 This Lease shall terminate without further notice at the expiration of the term, unless extended as herein expressly provided. Any holding over by Tenant after expiration shall not constitute a renewal or extension or give Tenant any rights in or to the Property except as expressly provided in this Lease.

ARTICLE 25

NOTICES

25.1 Any notice required or desired to be given pursuant to this Lease shall be in writing with copies directed

as indicated below and shall be personally served, or, in lieu of personal service, by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to Landlord, the address of Landlord is:

City Hall
Boston, Massachusetts

with a duplicate copy to:

and if addressed to Tenant, the address of Tenant is:

with a duplicate copy to:

Either Landlord or Tenant may change its respective addresses by giving written notice to the other in accordance with the provisions of this paragraph.

Any requests for approvals made by Landlord to Tenant where such approvals shall be deemed granted after a period of non-reply by Landlord shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

ARTICLE 26

QUIET ENJOYMENT; ENCROACHMENTS AND VAULTS; RELIEF OF
LANDLORD FROM LIABILITY FOR FUNDS IN ITS POSSESSION

26.1 The Landlord covenants that Tenant, upon paying the annual rent and all other charges herein provided for, and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease, without hindrance or molestation of the Landlord, or any person or persons claiming under or through the Landlord, subject to the Permitted Exceptions and any other matters expressly hereinabove set forth; provided, however, that this covenant shall not extend to any vault, subway entrance, sub-sidewalk, sub-alley or sub-street, if any, now or hereafter used incident to or as an appurtenance to the Leased Premises, nor to any encroachments of the Improvements on premises other than the Leased Premises, including, but not limited to, the encroachment of any present or future building, wall or structure, either on the Leased Premises or on any property adjacent thereto, and the Landlord shall not be liable for any such encroachments, but the Tenant agrees to indemnify and save harmless the Landlord during the term of this Lease from and against any and all liability, penalty, damages,

expense and judgment, whatsoever, on account of the location of any building, wall, structure or other encroachment on or partly on the Leased Premises, or on or partly on any property adjacent thereto.

Neither Landlord nor Tenant (and if Tenant is a partnership, joint venture or trust, no partner, venturer, trustee or beneficiary thereof) shall be personally liable for any of their respective obligations hereunder, and in the event of a claim by either party against the other, the claimant shall look solely to the interests of Landlord or Tenant in the Property, as the case may be, and not to any other assets for satisfaction of such claim.

The Landlord named herein, and its respective successors in title to the Landlord's interest under this Lease, shall be liable only for breaches occurring during its or their respective ownership of such Landlord's interest hereunder, and the Landlord shall never be liable to the Tenant for consequential damages.

26.2 It is expressly understood and agreed that all vaults now or hereafter built, projecting beyond the building line of the Leased Premises, are not included within the premises demised by this Lease, but the Tenant may occupy and use the same during the term of this Lease, subject to such laws, rules and regulations as may be imposed by the appropriate municipal departments with respect thereto. No revocation on the part of any municipal department or authority

of the license to maintain and use such vaults shall in any way affect this Lease or the amount of the Base Rent, Percentage Rent or any other charges payable by the Tenant hereunder. If any such license so to maintain and use such vaults shall be revoked, Tenant will, at its sole cost and expense, do and perform all such work as may be necessary to comply with any order revoking the same.

ARTICLE 27

ESTOPPEL CERTIFICATE

27.1 The Tenant and the Landlord agree at any time and from time to time, upon not less than ten (10) days' prior written notice by the one of them requesting the same, to execute, acknowledge and deliver to the other party a statement in writing, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), and the dates to which the annual rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the party executing such statement, there are defaults under this Lease, and, if so, specifying each such default, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or assignee of the fee or leasehold or any Leasehold Mortgagee or assignee of any Leasehold Mortgagee.

ARTICLE 28

REMEDIES CUMULATIVE

28.1 The specified remedies to which the Landlord or Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Landlord or Tenant may be lawfully entitled in case of any breach or threatened breach by the Landlord or Tenant, as the case may be, of any provision of this Lease. The failure of the Landlord or Tenant to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option.

28.2 A receipt by the Landlord of rents, with knowledge of the breach of any covenant hereof, shall not be a waiver of such breach, and no waiver by the Landlord of any provision of this Lease shall be effective unless in writing and signed by the Landlord. Acceptance by the Landlord (including, without limitation, of any draft remitting the same) of payments in amounts less than due the Landlord shall be treated as payments on account to the extent thereof, notwithstanding any statement or endorsement on or accompanying the same; and the acceptance by the Landlord from any person other than the Tenant on account of the Tenant's obligations shall not be treated as a waiver by the Landlord of any right the Landlord may have on account of an improper trans-

fer of the Tenant's interest under this Lease.

28.3 In addition to the other remedies in this Lease provided, the Landlord or the Tenant shall be entitled to restraint of the other, as the case may be, by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions and provisions of this Lease.

ARTICLE 29

SURRENDER NOT A MERGER

29.1 The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, operate as an assignment to Landlord of any and/or all subleases of subtenants.

ARTICLE 30

ATTORNEYS' FEES AND OTHER COSTS

30.1 In the event either party shall bring any action or legal proceeding for damages for an alleged breach of any provision of this Lease, or to enforce, protect, determine or establish any term or covenant of this Lease or right of such party, or in the case of Landlord to recover rent or to terminate the tenancy of the Leased Premises, and if, in such event, the party bringing the action or proceeding shall prevail (by settlement or otherwise) or substantially prevail in any such action or legal proceeding, then the prevailing party shall be entitled to recover from the other party as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys'

fees and court costs.

30.2 It is anticipated that, from time to time during the term of this Lease, the Landlord shall require the advice of counsel or other professional consultants in the examination of requests submitted by the Tenant, review and approval of documentation required from time to time to be provided by the Tenant to the Landlord under this Lease, and otherwise in the review of the exercise by the Tenant of any of its rights hereunder.

Accordingly, without limiting the Landlord's right to recover the reasonable fees and expenses of counsel incident to enforcing its obligations on default or breach of condition by the Tenant, the Tenant agrees to pay to the Landlord reasonable fees and expenses of counsel and other professional consultants (but only to the extent not on the full time payroll of Landlord) incurred by the Landlord on account of services rendered incident to disposition of requests made by the Tenant under this Lease, including, without limitation, review and preparation of documentation required incident thereto, or in services rendered to the Landlord incident to the exercise by the Tenant of its rights hereunder which requires review or preparation of documentation, such as review and preparation of documentation in compliance with the Tenant's request that the Landlord enter into an agreement with a Leasehold Mortgagee of the type referred to in Article 23 hereof, all to the end that the rent paid by the Tenant shall be absolutely net to the Landlord; and

the Landlord shall have the right to treat any such fees as additional rent, for the recovery of which, the Landlord shall have all the remedies provided herein; but excluding from the operation of the foregoing provisions of this paragraph all such fees and expenses incurred incident to the Landlord's consideration of submissions or requests for approval, consent or the like where under the terms of this Lease such submission, consent, approval or the like is required as a condition to an act by Tenant.

ARTICLE 31

DEFINITIONS

31.1 Terms defined elsewhere in this Lease shall have the meanings ascribed to them. In addition, the terms defined below shall have the meanings ascribed to them wherever such terms shall appear in the Lease, unless the context otherwise requires.

31.2 The term "Landlord" shall be limited to mean and include only the owner or owners at the time of the fee of the Leased Premises and, in the event of any transfer or transfers of title to the same, the Landlord herein named (and, in case of any subsequent transfers and conveyances, the then grantor) shall be automatically freed and released from and after the date of such transfer and conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, it being intended hereby

that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership of the fee of the Leased Premises.

31.3 The term "Occupancy Tenant" shall mean any tenant, subtenant, licensee, concessionaire or other party of any type entitled to the use or occupancy of space in or on the Improvements or the Property, [under a sublease from Tenant,] other than Tenant holding under this Lease; the term "sublease" shall mean any lease or other agreement, written or oral, for the use or occupancy of any such space [entered into between Tenant and an Occupancy Tenant.] These terms shall refer to any such Occupancy Tenant or sublease whether such Occupancy Tenant or sublease enjoys a position superior or subordinate to Tenant or this Lease.

31.4 The term "person" shall include an individual, corporation, partnership, unincorporated organization or government, or any agency or political subdivision thereof and any other entity, whether or not incorporated. The use of the neuter gender shall include the masculine and the feminine and the use of the singular shall include the plural.

31.5 The terms "rent" or "rents" shall mean the Base Rent monthly reserved, Percentage Rent and all amounts specified in this Lease as additional rent.

31.6 The term "Institution" shall mean any of the following:

(a) a bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code, as amended (or like future provisions of such Code) chartered under the laws of The United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$100,000,000.

(b) an educational institution with a capital endowment of not less than \$100,000,000.

(c) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution or for any trade union, and, in each such case, having a net worth, determined in accordance with sound, conservative accounting practice, of not less than \$100,000,000.

31.7 The term "Leasehold Mortgage" shall mean any mortgage on Tenant's estate created under this Lease which is permitted by the terms of Article 23. The term "Leasehold Mortgagee" shall mean the holder of any Leasehold

Mortgage.

31.8 The expression "movable trade fixtures, machinery and equipment", or words of similar import, shall include all furnishings, chattels, personal property and equipment, and all additions, replacements or articles in substitution thereof, of every kind and description which are not now or hereafter affixed and attached to the Improvements and which are not used, or procured for use, in connection with the operation of the Improvements, owned by others than Tenant, and all furnishings, chattels, personal property and equipment and all additions, replacements or articles in substitution thereof, of every kind and description which are owned by occupants of space in the Improvements or the Leased Premises, whether or not so affixed and attached, so long as the same are readily removable without material damage or injury to the Improvements.

31.9 The term "Plan" shall mean the Downtown Waterfront-Faneuil Hall Urban Renewal Plan.

31.10 The term "Total Project Costs" shall mean all bona-fide costs incurred in construction of the Initial Improvements and off-site improvements relating to or installed in connection with the Initial Improvements, and shall include without limitation the following items: (i) amounts paid to the contractors under construction contracts; (ii) amounts paid to the Architect and to architectural and engineering consultants; (iii) amounts paid for borings, surveys, tests, historical and environmental investiga-

tions; (iv) costs of insurance during construction including builders risk, public liability and workmen's compensation; (v) costs of relocation of existing structures and facilities necessitated by construction and all other costs of site preparation; (vi) Base Rent, Impositions and interest paid during construction; (vii) costs of fees, permits, licenses; (viii) costs of legal, accounting, planning, appraisal and other consulting services, placement fees, commissions, recording fees, title insurance premiums and charges and other costs and charges incurred in connection with the acquisition of the leasehold interest created by this Lease and the construction and financing of the Initial Improvements and such off-site improvements.

31.11 The term "Architect" shall mean only the architectural firm of WZMH Group, Inc., or such substitute therefor as shall be approved by Landlord.

31.12 The term "General Contractor" shall mean only the firm of _____, or such substitute therefor as shall be approved by Landlord.

31.13 The term "term" or "term of this Lease" or "Lease term" shall include properly exercised extensions thereof allowed hereby. Any reference to the "termination of this Lease" shall be deemed to include any termination hereof by expiration, default or otherwise.

31.14 The term "Depository" shall mean a bank or trust company chartered under the laws of the United States of America or the Commonwealth of Massachusetts with a combined

capital and surplus account of not less than \$50,000,000, which shall be selected by the mutual agreement of the Landlord and the Tenant and, in accordance with such terms as the parties may agree and upon provision for indemnity suitable to it, shall agree to act as depository of funds for the purposes provided in this Lease. The Depository shall be under no obligation to cash or collect interest coupons on any securities deposited hereunder issued in coupon form, but shall hold such coupons subject to the order of the Tenant and the provisions of this Lease under which such securities were deposited. Cash deposited with the Depository shall be invested by the Depository in U.S. Treasury bills or notes or such other form of investment as shall be mutually acceptable to Landlord and Tenant and all amounts earned thereon shall be considered part of, and devoted to the purpose of, the deposit with any balance remaining after such purpose has been satisfied to Tenant.

ARTICLE 32

WALKWAY TO THE SEA; MUSEUM; TRASH COMPACTOR/MECHANICAL EQUIPMENT

32.1 As an integral part of the obligations of Tenant hereunder with respect to the Property, Tenant will comply with the provisions of Exhibit E attached hereto, with reference to the items identified thereon as Walkway to the Sea, Museum, and Trash Compactor/Mechanical Equipment.

ARTICLE 33

NON-DISCRIMINATION; EMPLOYMENT; NO CONFLICTS

33.1 Tenant, for itself and all successors and assigns, agrees that in the redevelopment of the Leased Premises and in all construction activity undertaken with respect thereto:

(a) Tenant will not discriminate against any employee, or applicant for employment because of race, color, sex, religion, age, or national origin. Tenant will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

(c) Tenant will send to each labor union or representative of workers with which Tenant has a collective bargaining agreement or other contract or understanding, a notice, to be provided advising the said labor union or workers' representative of Tenant's commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended,* and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Tenant will comply with all provisions of Executive Order #11246 of September 24, 1965, as amended,* and of the rules, regulations, and relevant orders of the Secretary of Labor.

*Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967.

(e) Tenant will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended,* and by the rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to Tenant's books, records, and accounts by the Landlord, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of Tenant's noncompliance with the nondiscrimination clauses of this Section 33.1, or with any of the said rules, regulations, or orders, upon written notice to Tenant, and the continuance of such noncompliance for sixty (60) days thereafter, Tenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended,* and such other sanctions may be imposed and remedies invoked as provided in Executive Order #11246, of September 24, 1965, as amended,* or by rule, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

(g) Tenant will include the provisions of paragraph (a) through (g) of this Section 33.1 in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended,* so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. Tenant will take such action with respect to any construction contract, subcontract, or purchase order as the Landlord directs as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Tenant becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Landlord, Tenant may request the United States to enter into such litigation to protect the interest of the United States.

*Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967.

33.2 Tenant, for itself and all successors and assigns, further agrees that in the redevelopment of the Leased Premises and in all construction activity undertaken with respect thereto, exercise best efforts and shall cause the General Contractor to exercise best efforts to employ workers so that the worker hours on a craft-by-craft basis shall be performed as follows:

- (a) at least 50% by bona fide City of Boston residents;
- (b) at least 25% by minorities;
- (c) at least 10% by women.

For the purposes of this Section 33.2, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions. Tenant shall require the General Contractor to notify the City of Boston Employment and Economic Policy Administration, five (5) days in advance of any public advertisement and ten (10) days in advance of any proposed hiring date (five days for construction jobs), of the existence of job opportunities which it intends to establish in connection with construction, stating its desire to be referred Boston residents. Tenant shall further direct the General Contractor to maintain records reasonably necessary to ascertain compliance with this Section 33.2 for at least one (1) year after the issuance of the Certificate of Completion, and to make the same available to the Landlord for inspection upon reasonable notice.

33.3 No member of the Congress of The United States of America shall be admitted to any share or part thereof, or to any benefit to arise from this Lease. No member, official, or employee of the Landlord shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

33.4 No member, official or employee of the Landlord shall be personally liable to Tenant in the event of any default or breach by the Landlord or for any amount which may become due to Tenant or on any obligations under the terms of this Lease.

ARTICLE 34

GENERAL

34.1 The captions used in this Lease are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Lease.

34.2 Any executed copy of this Lease shall be deemed an original for all purposes.

34.3 Time is of the essence for the performance of each covenant and term of this Lease.

34.4 In case any one or more of the provisions contained herein, except for the payment of rent, shall for any

reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

34.5 The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural.

34.6 Each term and provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition, conferring upon Landlord, in the event of breach of any such term or condition, the right to terminate this Lease in accordance with and subject to the provisions of Article 18. The termination or expiration of this Lease shall not terminate obligations of the Tenant which remain unperformed at such time (for example, but without limitation, Tenant's obligations under Section 3.1E, hereof).

34.7 The covenants and agreements contained in this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, and

assigns (to the extent this Lease is assignable under the terms hereof). The Landlord and Tenant each warrant and represent to the other that corporate or other action has been taken by the warranting party to authorize the execution and delivery of this Lease and that this Lease is valid and binding upon it in accordance with its terms.

34.8 The waiver of Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

34.9 Each party hereto agrees to act reasonably and in good faith with respect to the performance and fulfillment of the terms of each and every covenant and condition contained in this Lease, and with respect to the exercise of each and every right reserved herein, [and wherever in this Lease the consent, approval or exercise of judgment or discretion of either party is required or requested, such consent or approval shall not be withheld or delayed unreasonably and such judgment or discretion shall not be exercised arbitrarily, but shall be exercised reasonably and promptly;] provided, however, that this Section shall not apply to the exercise of the Landlord's rights under Sections 19.2 hereof. This Section shall not be construed in any case as a contractual limitation on the exercise by the Landlord of the regulatory powers conferred upon the Landlord by any provision of general or special law now in effect or hereafter

enacted.

34.10 Where interest is provided to be paid hereunder, the rate therefor, on an annualized basis, shall be computed quarterly at the base rate (or its reasonable equivalent) from time to time charged by The First National Bank of Boston, but in no event more than the amount, if any, which would violate applicable usury prohibitions.

34.11 The Landlord hereby agrees that it shall provide to the Tenant not less than thirty (30) days prior written notice with respect to any voluntary transfer or voluntary disposition of the Landlord's interest in the Leased Premises, provided, however, that failure to give such notice shall not affect the validity of any transfer or disposition of the Landlord's interest.

34.12 In recognition of the importance to the Landlord of the maintenance, management and operation of the Property in a first-class manner consistent with that accorded like properties in the City of Boston, the Tenant agrees to have under written contract at all times a real estate management firm with recognized experience in the management of commercial property of type and use similar to the Leased Premises to provide management services customary for premises of the type, use and location of the Leased Premises.

ARTICLE 35

INTEGRATION

35.1 This Lease, and the Exhibits and addenda, if any, attached hereto, constitute the entire agreement between the

parties, and there are no agreements or representations between the parties except as expressed herein. No subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

In Witness Whereof, the parties hereto have executed this Lease on the respective dates below set forth, under seal.

LANDLORD:

BOSTON REDEVELOPMENT AUTHORITY

Dated:

By _____
Its

TENANT:

MARKETPLACE CENTER ASSOCIATES

Dated:

By _____
Its

DRAFT EXHIBIT C

PARCEL D-10 AREA

DEVELOPMENT PROGRAM

SUMMARY

FUNCTION	GROSS AREA	NET USABLE AREA	NET RENTABLE AREA
Retail	48,827	38,394	45,813
Bank	3,200	3,200	3,200
Museum	5,000	5,000	5,000
Office	354,225	285,009	323,368
SUBTOTAL	411,252	331,603	377,381
T.L.A. Office	4,550		
" Retail	650		
Garage Entrance	2,748		
Arcade	14,987		
Plaza	6,681		
Trash Facility	7,896		
(Basement & G.F.)			
Garage (Basement)	56,335		
TOTAL FLOOR GROSS	505,099		
(including Basement)			

DRAFT EXHIBIT D

LEASE COMMENCEMENT AGREEMENT
LESSOR: BOSTON REDEVELOPMENT AUTHORITY
LESSEE: MARKETPLACE CENTER ASSOCIATES
SITE: PARCEL D-10

EXHIBIT D

OUTLINE SCOPE OF SERVICES FOR THE DEVELOPMENT CONSULTANT

Meredith & Grew, Incorporated will act as consultant to Marketplace Center Associates in various aspects of the development of Parcel D-10. Meredith & Grew, Incorporated will include within its responsibility the following:

1. assist in the assembly of a market study to demonstrate the supply and demand for office and retail/commercial space in the downtown Boston area;
2. assist in targeting the retail/commercial tenant mix for the development to compliment the present retail complex in the Faneuil Hall Markets;
3. assist in marketing and preleasing the office space;
4. advise and assist Marketplace Center Associates in the acquisition of the necessary debt and equity financing;
5. act as leasing agent for the development;
6. advise and assist Marketplace Center during the preconstruction and construction of the development to assure and enhance the marketability of the project;
7. act as managing agent for the development during lease up and after completion.

DRAFT EXHIBIT E

DESIGN REVIEW PROCEDURE

URBAN DESIGN DEPARTMENT

June, 1967

Technical guide number fifteen, "Design Review in Urban Renewal", published by the Urban Renewal Administration, Washington, D. C., explains in detail the design review process. Quoting from the bulletin's introduction:

"Design advice and guidance made available to Redevelopers as part of the review process, coupled with the review itself, serves to co-ordinate individual efforts and realize the best possibilities inherent in each project. Better architecture and site planning are the most obvious results of these procedures; but benefits accrue in other ways, too: In overall visual harmony and in achieving the broad functional and livability objectives of fine urban design.

All redevelopment proposals for the Boston Redevelopment Authority's Disposition Parcels will be subject to design review and approval by the Authority prior to and subsequent to the execution of the Disposition Agreement. This review will evaluate the quality and appropriateness of the proposal on the basis of the design objectives stated in the Plan and in the special land use and building requirements stated in more detailed and defined Development Objectives and Controls prepared for this site. In addition, reference will be made during design review to the Illustrative Site Plan and other site plan and design studies prepared by the Authority Staff. All such studies shall be made available to the Redeveloper.

This review may be conducted by the Authority and its Staff, or at the discretion of the Authority, a qualified independent review panel may be selected to make design evaluations and recommendations to the Authority. The Staff member responsible for maintaining liaison with the Redeveloper's Architect will be the Director of Urban Design or a designated alternate. Formal required submissions shall be made to the Authority through the Director of Community Development.

It is expected that a continuous contact will be maintained between the Redeveloper's Architect and the Department of Urban Design during the design and working drawing process and that reasonable requests for progress prints in addition to those required below will be met at any time.

Required submission will occur at four stages in the preparation of the redevelopment proposal. Additional informal reviews at the request of either the Redeveloper or the Urban Design Staff are encouraged. A time schedule for the required submissions will be agreed upon on or before the time of execution of the Land Disposition Agreement and will be set forth therein or in a separate document. It is the intention of the Urban Design Staff that once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of previous approved submission or to new elements which were not present in previous submissions.

Since most housing submissions will also involve Federal Housing Authority review, Authority submission stages 2, 3, and 4 correspond to FHA requirements except that our emphasis is on the Urban Design aspect of the proposal. In addition, perspective drawings or a model of presentation quality are required in stage 3.

At the point where all required elements of a stage have been submitted, the Director of Urban Design will send a letter to the Redeveloper's Architect indicating either that the design submission has been reviewed and found satisfactory, or that further work is required before such approval can be given.

The four formal stages of submission follow:

1/ SCHEMATIC DESIGN

This review is intended to secure agreement on and approval of the basic design concept prior to extensive work by the Redeveloper's Architect. The Authority does not encourage submission of more than the following, which it feels is sufficient to describe the proposal.

- a/ Site plan at any appropriate scale (1" = 100' and 1" = 40' are preferred scales); emphasizing general relationships of proposed and existing buildings, walls and open space, including that mutually defined by buildings on adjacent parcels and across streets. The general location of walks, driveways, parking, service areas, roads and major landscape features in addition to the buildings should be shown. Pedestrian and vehicular flow through the parcel and to adjacent areas shall be shown. Where relevant, site sections showing height relationships with proposed and adjacent buildings shall be provided.
- b/ Building plans, elevations, and sections at any appropriate scale, showing organization of functions and spaces. These drawings need not be more detailed than sufficient to indicate general architectural character and proposed finish materials.
- c/ Study model at 1" = 100' (minimum) is suggested, and may be required. However, this is not a presentation model such as that mentioned in Submission 3. Adjacent buildings, streets & buildings across streets should be included.
- d/ All sketches, diagrams, and other materials relevant to the proposal which were used by the architect during his initial study and which will help to clarify the architect's problem and his solution to it.
- e/ Written statement of proposal including: Tentative number of living units; type of building (row house, elevator apartment, etc.); size distribution of units (by number of bedrooms); number of parking spaces; community or supporting facilities provided; principal building materials; estimated rents, or carrying charges.
- f/ Proposed time schedule for the following submissions and estimated construction time.

Upon approval by the Authority of the SCHEMATIC DESIGN, the following submission is required:

2/ DESIGN DEVELOPMENT

This review is intended to secure agreement on and approval of the final design prior to extensive and detailed work on the preliminary working drawings.

This submission may correspond to the Required Application Exhibits for Federal Housing Authority Mortgage. A copy of Federal Housing Authority Application for Mortgage Insurance, Form 2013, and tentative Outline Specification, Form 2435, should be included in this submission.

- a/ Site Plan development of 1. a. at 1" = 40' minimum (or as determined after approval of SCHEMATIC DESIGN). Phasing possibilities, if any, shall be shown. Proposed site grading, including typical existing and proposed grades at parcel lines shall be shown. Those areas of the site proposed to be developed "by others" or easements to be provided for others shall be clearly indicated. All dimensions which may become critical from the point of view of zoning shall be indicated. Adjacent buildings, streets and buildings across streets must be indicated.
- b/ Site sections at 1" = 40' (minimum) showing vertical relationships in addition to those shown above.
- c/ Building plans, elevations, and sections developed from those of 1b. and in addition, plans and elevations of each living unit at 1/4" = 1'-0".
- d/ Study model, development of 1c. at 1" = 100' (minimum).
- e/ Written statement of proposal including: Number of living units; type of building (row house, elevator apartment, etc.); size distribution of units (by number of bedrooms); number of parking spaces; community or supporting facilities provided; structural system and principal building materials; estimated costs, rents, and operating expenses.
- f/ Perspective sketch, showing general architectural character.
- g/ Time schedule for the following submission.

Upon approval by the Authority of the DESIGN DEVELOPMENT, the following submission is required:

This review is intended to secure agreement on and approval of the character and scope of the proposal completely.

This submission should correspond to the Federal Housing Authority Required Exhibit of Preliminary Working Drawings. A copy of Form 2013 and Form 2435 (Outline Specifications) should be included in this submission.

3/ PRELIMINARY WORKING DRAWINGS AND OUTLINE SPECIFICATIONS

- a/ Site plan(s) developed in sufficient detail to describe the character and scope of the proposal completely. Without limiting the generality of this requirement, the site plan shall indicate in addition to that required in 1a. and 2a. all landscaping and site development details including walls, fences, planting, outdoor lighting, street furniture, and ground surface materials; bounding streets; points of vehicular and pedestrian access; number and type of parking facilities; utility lines and connections; existing and proposed grading and drainage; indication of proposed new paving, planting and lighting to be done by the City; existing and proposed right-of-way development and/or easements to remain. Work to be done by others should be fully described and the responsible party properly identified.
- b/ Building plans (including the roof) elevations, and sections in greater detail than required in 2c. developed in sufficient detail and at large enough scale to show all materials and assemblies comprising the buildings. All exposed mechanical equipment and vents should appear on elevations and roof plans.

- d/ Eye-level perspective sketches and/or model showing architectural and Urban Design character of the proposed project. A rendered site plan showing all adjacent ; proposed and existing structures and streets must be submitted. All sketches, models, and other presentation materials must be an accurate representation of the proposal.
- e/ Expanded statement of DESIGN DEVELOPMENT, 2e., including the following: Major building dimensions and gross area of buildings, size of each unit in square feet, floor area ratio, useable open space per unit, proposed division of work between Redeveloper and public agencies; proposed financial plan. Where variances, waivers or deviations from existing City, State, or Federal regulations are proposed, they shall be listed and progress toward obtaining such variances shall be stated.
- f/ Time schedule for the following submission.

Upon approval by the Authority of PRELIMINARY WORKING DRAWINGS AND OUTLINE SPECIFICATIONS, the following submission is required:

4/ FINAL WORKING DRAWINGS AND SPECIFICATIONS

This review is intended to secure final agreement on and approval of the contract documents and the complete proposal.

- a/ Complete site plans for the final parcel development to working drawing level of detail. These drawings, upon approval, will serve as a basic co-ordination drawing indicating scope of work and responsibilities to be performed by others.
- b/ Complete working drawings and specifications ready for bidding.
- c/ Statement of proposal, indicating differences, if any, from 3e.
- d/ Time schedule for construction of this project.
- e/ Detailed financial plan including costs, rents, and operation.

Once FINAL WORKING DRAWINGS AND SPECIFICATIONS have been approved and construction started, the only items subject to an additional review will be requests for change orders in the construction. The Redeveloper is strictly required to construct the project in accordance with all details of the approved drawings. Permission to make changes from such approved drawings must be requested by the Redeveloper in writing to the Director of Urban Design who, in turn, will reply in writing, giving his approval or disapproval of the changes. No changes in the work are to be undertaken until such approval has been obtained.

DRAFT EXHIBIT F



WALK TO THE SEA

INTRODUCTION

It has been our overriding concern in developing the design of Marketplace Center to respond to the design guidelines set forth by the B.R.A. in the letter of October 9, 1981, and a subsequent meeting with the B.R.A. design staff. We feel the city's design concerns parallel our own architectural interests. As stated in our first submission: "Parcel D-10 cannot be viewed as an independent entity, in a true urban design sense, it must reach out, interact with, and unify the many elements of the city which come together at that point." The following is our response to these concerns.

- The office element at the south end of the site is carefully articulated to respond to the urban and architectural character of its immediate context. The building interacts with the State Street block to form a "Gate-Way" at this end of State Street; it strengthens the sense of enclosure of McKinley Square yet allows enticing vistas between the square and Commercial Street through an elegant three story high exterior lobby at the Commercial Street corner.

- The granite sheathed lower portion of the building is informed by, and responds to the buildings in its immediate vicinity. For example, along State Street, the center entry section compliments the State Street Block in height, scale, and texture, while the reflective glass upper portion and the set back at the top minimizes the massing of the tower. Horizontal bands add reference to cornice lines of adjacent buildings and textural interest to the tower. The facades of the center portion along Commercial Street and Atlantic Avenue are related to the Custom House tower.

- Views towards the Customs House tower and McKinley Square are enhanced by creating an attractive sequence of changing vistas, i.e. from the framed view of the Custom House tower along Commercial Street to extending glimpses of the square and the State Street block through the sky-lit two story arcade and the three story high exterior lobby of the office entry. The square and the tower would be finally revealed in their full glory when one arrives at State Street.

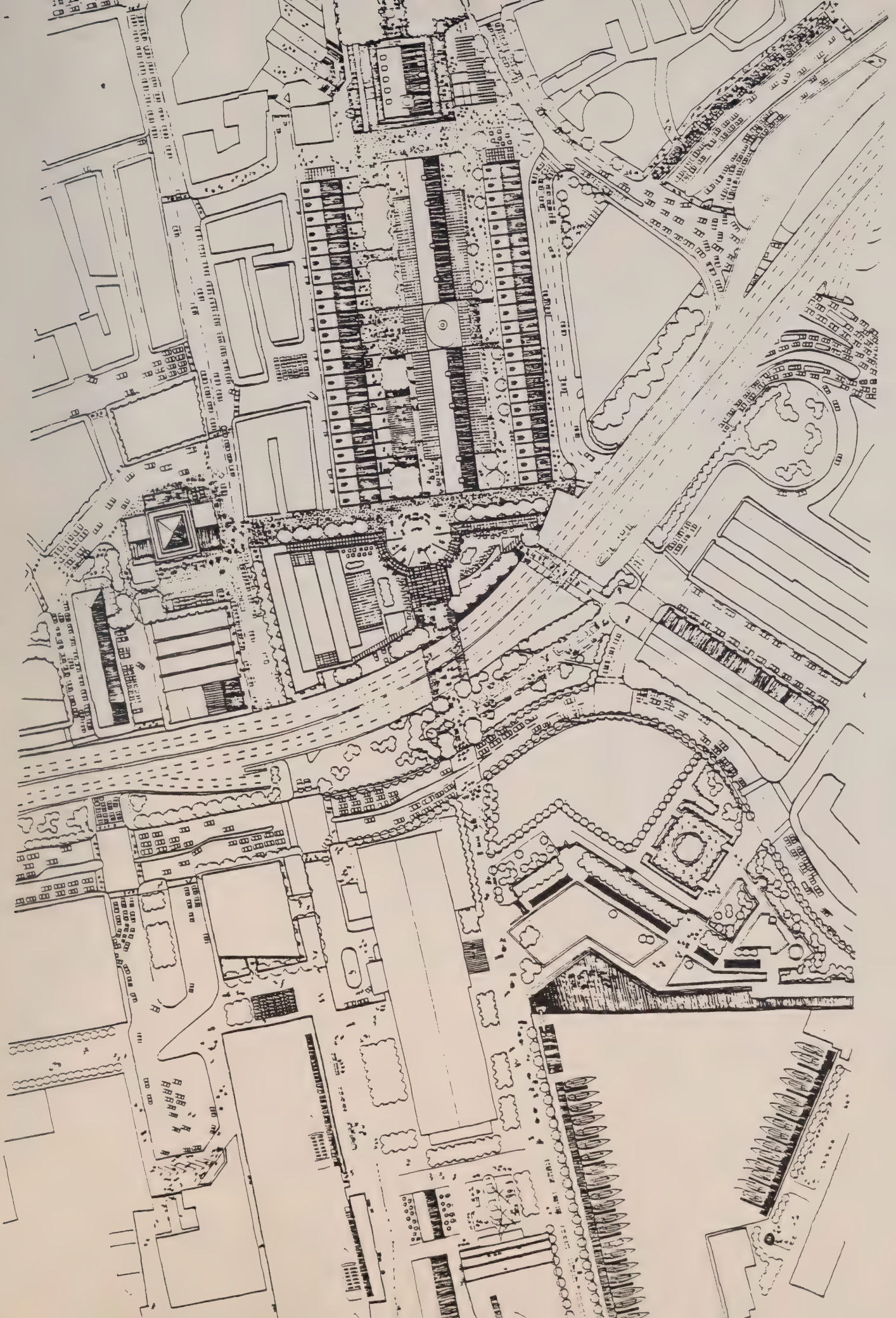
- Care has been taken to develop a visually transparent and colorful edge along the "Walk-to-the-Sea". The skylit arcade insures maximum interaction between the two-level retail and activities on the street. The center glass canopy, flanked by the glazed arcades becomes visually wider and forms a festive node at the "Walk-to-the-Sea", in both directions. The Commercial Street arcade is further extended to intersect with North Market Street where a pedestrian walk is provided as a link towards the North End and the northern portion of the waterfront.

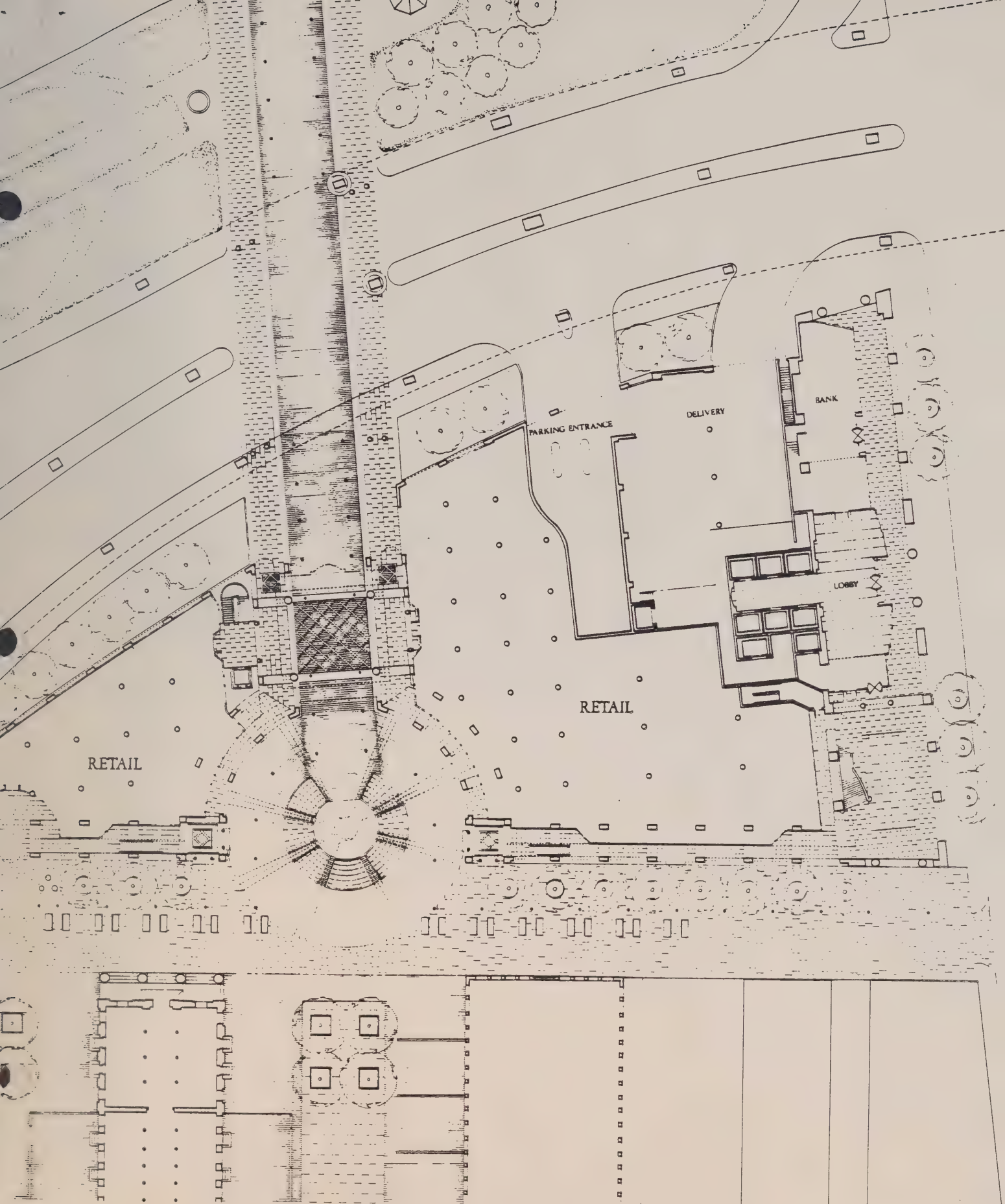
- Though limited vehicular access is allowed between Clinton and Chatham Street, Commercial Street will be attractively landscaped, paved and furnished in the spirit of Quincy Market, to encourage many outdoor activities.

- The office tower is designed within the 220'-0" height limit, inclusive of the mechanical penthouse.

In all, we believe that the design is a highly contemporary statement. It reflects the need for positive recognition of the context, without compromising the expression of function and use; that of Retail Center and Office Building.

SITE PLAN





FIRST FLOOR PLAN

DRAFT EXHIBIT G

LICENSE

BOSTON REDEVELOPMENT AUTHORITY

to

MARKETPLACE CENTER ASSOCIATES

The Boston Redevelopment Authority, herein called the "Authority", does hereby authorize and permit Marketplace Center Associates, its officers, partners, employees, agents and servants, hereinafter called the "Licensee", to enter upon certain premises of the Boston Redevelopment Authority known as Parcel D-10, in The Downtown Waterfront-Faneuil Hall Urban Renewal Area for the purpose of test borings and other related survey work.

This License is subject to the following terms and conditions:

1. The License may be revoked at any time by the Authority.
2. The Licensee agrees to obtain the following insurance, naming the Authority as co-insured and furnish proof of such insurance:
 - a) Workmen's Compensation.
 - b) General liability insurance for bodily injury of limits not less than \$1,000,000 for one person and subject to a limit of \$3,000,000 for one accident; and also property damage liability of not less than \$100,000 each accident.
 - c) Automobile liability insurance in the event automobiles, etc., are used in connection with performance under the License. This insurance should provide bodily injury limits as required in (b) above and also property damage liability of not less than \$100,000 for each accident.

3. The Licensee shall, if the work requires occupancy of a public street or alley, obtain required permits from the City of Boston before proceeding with such work.
4. The Licensee shall use a minimum of land area in making borings, and in no event shall such area exceed 500 square feet on any one boring site.
5. The Licensee shall keep accurate records of the dates and times spent at each boring site and shall furnish the Authority a copy of said record on the termination of this License.
6. The Licensee agrees to pay, indemnify and save harmless the Authority from all suits, actions, claims, damages, demands or losses, expenses and costs of every kind and description to which the Authority may be subjected or sustain by reason of the work herein licensed, or by reason of any neglect or act of the Licensee, its agents, servants, employees, visitors, guests, or any person or corporation dealing with the Licensee in any way in the occupancy or the use of the Property.
7. All boring holes shall be filled, covered and sealed to prevent any leakage from ground water or tidal action to existing grade level and the parcel shall be cleared, cleaned, repaired and restored to its original condition.
8. The Authority shall not be bound to reimburse the Licensee, its agents, employees, contractors or subcontractors for any funds expended on the work hereby licensed.
9. The Licensee shall not permit, commit, nor suffer waste or impairment of the property.
10. The Licensee shall adhere to all provisions of codes and ordinances of the City of Boston and the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, on the day of 1981, at

Boston, Massachusetts, the parties hereto have caused this License

three counterparts to be signed, sealed and delivered by their duly
authorized officers, respectively.

BOSTON REDEVELOPMENT AUTHORITY

_____ By _____
Robert J. Ryan, Director

MARKETPLACE CENTER ASSOCIATES

_____ By _____

APPROVED AS TO FORM:

Harry G. Stoddard
Chief General Counsel

EXHIBIT A

of Document No. 4268

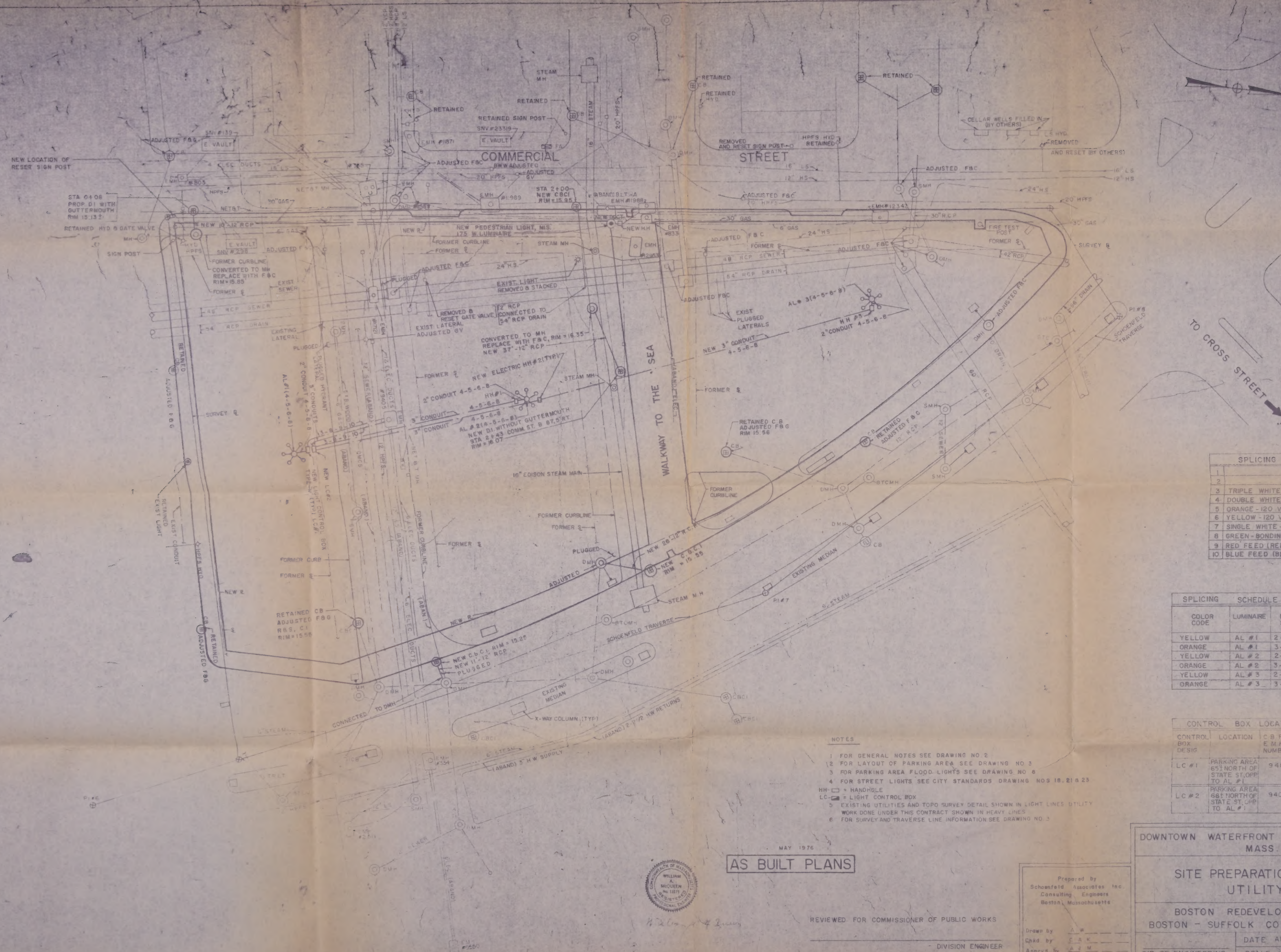


DRAFT EXHIBIT A
THIS PLAN (PARCEL D-10) IS FOR
INFORMATIONAL USE ONLY. IT IS NOT
TO BE USED FOR ENGINEERING PURPOSES.

BOSTON REDEVELOPMENT AUTHORITY	
DOWNTOWN WATERFRONT PANEL HALL PROJECT	
PROJECT NO. MASS R-11	
BOSTON, SUFFOLK COUNTY, MASSACHUSETTS	
PARCEL D-10	
P.E.N. DRAWN BY J.S. CHECKED BY DATE: APRIL 1981	SCALE: 1" = 20'
D-10	

EXHIBIT "H"

of Document No. 4268



SPlicing	COLOR	CODE
1		
2		
3	TRIPLE WHITE - NEUTRAL EDISON FEED	
4	DOUBLE WHITE - NEUTRAL LIGHTS	
5	ORANGE - 120 V. LIGHTS	
6	YELLOW - 120 V. LIGHTS	
7	SINGLE WHITE - NEUTRAL LIGHTS	
8	GREEN - BONDING	
9	RED FEED (RED + ORANGE) EDISON FEED	
10	BLUE FEED (BLUE + YELLOW) EDISON FEED	

SPlicing	SCHEDULE	PARKING	AREA	LIGHTS	
COLOR CODE	LUMINAIRE	LAMP SIZE	FEED CONTROL BOX DESIG	FEED UTILITY E.M.H. NUMBER	REMARKS
YELLOW	AL #1	2-1000W	LC #1	9405	
ORANGE	AL #1	3-1000W	LC #1	9405	
YELLOW	AL #2	2-1000W	LC #2	9405	
ORANGE	AL #2	3-1000W	LC #2	9405	
YELLOW	AL #3	2-1000W	LC #2	9405	
ORANGE	AL #3	3-1000W	LC #2	9405	

CONTROL BOX	LOCATION	CB FEED E.M.H. NUMBER	SERIAL NO. OF LUMINAIRE CONTROLLED FROM CONTROL BOX	APPROX. LOAD PARKING AREA LIGHT, AMPS
LC #1	PARKING AREA 651 NORTH OF STATE ST. OPP. TO AL #1	9405	AL #1	LIGHT YEL = 24 OR = 36 FEED. RED = 36 BLUE = 24
LC #2	PARKING AREA 681 NORTH OF STATE ST. OPP. TO AL #1	9405	AL #28 AL #3	LIGHT YEL = 48 OR = 72 FEED. RED = 72 BLUE = 48

- NOTES
- 1 FOR GENERAL NOTES SEE DRAWING NO. 2
 - 2 FOR LAYOUT OF PARKING AREA SEE DRAWING NO. 3
 - 3 FOR PARKING AREA FLOOD LIGHTS SEE DRAWING NO. 8
 - 4 FOR STREET LIGHTS SEE CITY STANDARDS DRAWING NOS. 18, 21 & 23
 - 5 EXISTING UTILITIES AND TOPO SURVEY DETAIL SHOWN IN LIGHT LINES UTILITY WORK DONE UNDER THIS CONTRACT SHOWN IN HEAVY LINES
 - 6 FOR SURVEY AND TRAVERSE LINE INFORMATION SEE DRAWING NO. 3
- HH = HANDHOLE
LC = LIGHT CONTROL BOX



AS BUILT PLANS

REVIEWED FOR COMMISSIONER OF PUBLIC WORKS

DIVISION ENGINEER

Prepared by
Schoenfeld Associates, Inc.
Consulting Engineers
Boston, Massachusetts

Drawn by: A.W.
Chkd by: C.A.K.
Apprv. by: A.J.W.

DOWNTOWN WATERFRONT FANEUIL HALL PROJECT
MASS. R-77

SITE PREPARATION-CONTRACT X
UTILITY PLAN

BOSTON REDEVELOPMENT AUTHORITY
BOSTON - SUFFOLK COUNTY MASSACHUSETTS

DATE: APRIL 1975
SCALE: 1" = 20'

DRAWING NO. 7 OF 23
REVISED

DRAFT EXHIBIT H



SPHINX CLASP. No. 90J
SUBSTANCE 32 JUTE FINISH
9 x 12

